



WHAT IS §1031 EXCHANGE

A tax-deferred exchange represents a simple, strategic method for selling one qualifying property and the subsequent acquisition of another qualifying property within a specific time frame. Essentially, if you sell an investment property and use the proceeds to purchase a like-kind investment property, you can avoid paying federal income taxes.

Although the logistics of selling one property and buying another are virtually identical to any standard sale and purchase scenario, an exchange is different because the entire transaction is memorialized as an exchange and not a sale. It is this distinction between exchanging and not simply selling and buying, which ultimately allows the taxpayer to qualify for deferred gain treatment. So essentially, sales are taxable and exchanges are not.

The IRS recognizes NCS Exchange Professionals as a Qualified Intermediary, meaning that we will act as the third party during your transaction, holding all funds. One of our biggest concerns is the security of your funds. Unfortunately, this industry is not highly regulated and not all Qualified Intermediaries offer the same security as NCS. Placer Title Company, one of the most respected title companies in the industry, guarantees our funds and will give you this guarantee in writing. Backed with \$100 million dollars in annual revenue, your funds will be secure during your exchange transaction.



REQUIREMENTS

For a transaction to qualify for tax-deferred treatment under Section §1031, certain requirements must be met. (Click on each bullet point to learn more):

- * The property must be "like-kind"
- * There are minimum reinvestment requirements
- * A specific time frame must be followed
- * Exchange Property Identification Rules may apply
- * A specific holding period must be met
- * You must use a Qualified Intermediary

If you think that your property qualifies for an exchange, or you simply would like to learn more, please contact NCS Exchange Professionals toll-free at 866-USE-1031.



THE PROPERTY MUST BE "LIKE-KIND"

Replacement property acquired in an exchange must be like-kind to the property being relinquished. The words "like-kind" refer to the nature or character of the property and not to its grade or quality. In an exchange "like-kind" only applies to real property that has been used for business, trade, or investment purposes. Almost all real estate qualifies for an exchange.

There is some flexibility in this definition. Although the properties involved in an exchange must be like-kind, they do not need to be exactly alike. Below is a list of properties that can all be exchanged with one and other:

- * Single-Family Rentals
- * Industrial Buildings
- * Golf Courses
- * Retail Space
- * Farms and Ranches
- * Hotels and Motels
- * Leases with 30 years +
- * Multi-Family Rentals
- * Offices
- * Land



MINIMUM REINVESTMENT REQUIREMENTS

Real property that is sold must be replaced with real property. Also, as a rule of thumb the value of what is bought must be equal to or greater than the value of what is sold, less closing costs. Basically all proceeds from the sale of the relinquished property must be re-invested into the new property rather than sold for cash. If any proceeds are left over or used for other purposes they are considered a gain and are subject to taxation. If this is the case, the transaction is a partial tax-deferred exchange.

In general, IRC section 1031 provides that you must exchange for "like-kind" property. You must acquire a property with loans, equity, and sales price which are equal or greater than the property exchanged.



A SPECIFIC TIME FRAME MUST BE FOLLOWED

Beginning with the close of the relinquished property, you have 45 days to identify in writing the properties you intend to purchase and 180 days (or the due date for your tax return – whichever is earlier) to complete the acquisition of one or more of those properties. In addition, the 45 day identification period and the 180 day exchange period are calendar days. If the 45th day or 180th day falls on a weekend or holiday, the deadlines still apply. There are no extensions for Saturdays, Sundays, or legal holidays.



45 / 180 CALENDAR

The time requirements in a tax deferred exchange are very specific. From closing on the sale of the relinquished (sale) property, an Exchanger must:

1. *Properly identify potential replacement properties within 45 calendar days (the "Identification Period")

2. Close on the replacement properties within 180 calendar days of the relinquished property sale – OR – the due date (including extensions) for the Exchanger's tax return for the taxable year in which the relinquished property was transferred, whichever is earlier (the "Exchange Period")

Without taking into consideration an Exchanger's potential tax filing date restriction and based upon the closing date submitted, the 45-day Identification Period and 180-day Exchange Period deadlines are shown.



EXCHANGE PROPERTY IDENTIFICATION RULES MAY APPLY

Three basic rules serve to limit the number of properties that can be identified. The Taxpayer shall identify only that number of Replacement Properties which meets one of the "rules" set forth below:

* The Three-Property Rule – Three (3) Replacement Properties without regard to the fair market value of the Properties. For those who identify more than three properties, the next two rules apply.

* The 200% Rule – Any number of Properties so long as their aggregate fair market value as of the end of the Identification Period does not exceed two hundred percent (200%) of the aggregate fair market value of the Relinquished Property as of the date the Relinquished Property was transferred by the Taxpayer.

- The 95% Rule – Any number of Properties without regard to their aggregate fair market value so long as the Taxpayer received identified Replacement Properties constituting at least ninety-five (95%) of the aggregate fair market value of all identified Replacement Properties before the end of the Exchange Period.



A SPECIFIC HOLDING PERIOD MUST BE MET

The general rule is that a taxpayer must hold the property for at least two years before it can be considered for tax-deferred treatment. This rule applies both to the relinquished and replacement properties.

There is a more strict time requirement when related parties are involved—when selling to a related party, the related party must hold the relinquished property for at least two years. Selling the property prior to the two year mark will disallow the exchange.



YOU MUST USE A QUALIFIED INTERMEDIARY

As stated by the IRS, a Qualified Intermediary must be used in every exchange, even if the Taxpayer has identified a replacement property prior to selling the old property.

The Qualified Intermediary acts as the non-biased third party during an exchange transaction. The intermediary holds all funds and prepares any necessary documentation pertinent to the exchange. If at any time the IRS feels that the Taxpayer has been in direct contact with the proceeds from the sale of the relinquished property, the exchange will be disallowed. For this reason, it is extremely important that a trusted Qualified Intermediary, such as NCS Exchange Professionals, is used.

During an exchange, the Qualified Intermediary could possibly be dealing with millions of dollars. It is crucial that an investor chooses a company that is financially sound. Unfortunately, this industry is not highly regulated and not all Qualified Intermediaries offer the same security as NCS. Placer Title Company, one of the most respected title companies in the industry, guarantees your funds and will give you this guarantee in writing. Backed with \$100 million dollars in annual revenue, your funds will be secure during your exchange transaction. Our number one goal is the security of your funds.



BENEFITS

There are many benefits associated with a §1031 exchange. Here is a list of a few of the possible benefits:

- * Taxpayers can keep the "earning power" of the tax dollars working for them in another investment
- * Since no taxes are paid on an exchange, money can be considered an "interest-free loan" from the IRS
- * Tax liability is forgiven upon the death of the taxpayer, which means that the taxpayer's estate never has to repay the "loan"
- * Equities from several properties can be consolidated into a single more efficient property
- * Management-intensive properties can be sold and replaced with more manageable properties
 - Property owners who move to a new geographic location can relocate their equities



DELAYED EXCHANGE

The most common of all services provided, a Delayed Exchange gives investors up to 180 days to purchase a replacement property once the relinquished property is sold. There are three steps necessary to complete a delayed exchange.

- * Selling the relinquished property—before the close of escrow on the relinquished property it is necessary for the taxpayer to contact the Qualified Intermediary, NCS Exchange Professionals. NCS will prepare an exchange agreement and contact the closing agent. Upon close of the Relinquished Property, the funds will go directly to NCS and will be held over the course of the exchange.
- * Identifying the replacement property—the Exchanger will have 45 days to identify a replacement property in writing from the close of the relinquished

property. NCS Exchange Professionals will provide the identification form needed to acquire the replacement property. There are four ways to identify the property: In writing, unambiguous, signed, and sent by fax then mailed.

* Purchasing the Replacement Property—the Exchanger will have 180 days to purchase the replacement property from the close of the relinquished property. NCS Exchange Professionals will use the money acquired from the sale of the relinquished property to purchase the replacement property.



REVERSE EXCHANGE

The reverse exchange represents an exchange in which the Exchanger locates a replacement property and wants to acquire it before the actual closing of the relinquished property. Since the Exchanger cannot purchase the replacement and later exchange into property that he already owns, he must find a method to acquire the replacement property and still maintain the integrity of his exchange. There are two methods that can be used to accomplish a reverse exchange:

1. Front-Leg:

- * The Taxpayer loans the Intermediary the funds with which to purchase the Relinquished Property

- * The Intermediary purchases the Relinquished Property from Taxpayer

- * The Intermediary exchanges the Replacement Property for the Relinquished Property

- * Intermediary gives a non-recourse note to Taxpayer for the loan amount secured by a Deed of Trust on the Relinquished Property.

- * The Intermediary warehouses the Relinquished Property until such time as a Buyer is located

*Note that in this transaction, the Intermediary is actually entering into the chain of title on the Relinquished Property.

2. Back-Leg:

- * The Taxpayer loans the Intermediary the funds with which to purchase the Replacement Property

- * The Intermediary gives the Taxpayer a non-recourse note secured by a Deed of Trust, this time on the Replacement Property and the Intermediary warehouse the Replacement Property

* When a buyer is found for the Relinquished Property, Taxpayer will assign its interest in the purchase and sale agreement to the Intermediary

* The Intermediary will instruct the Taxpayer to direct deed the Relinquished Property to the Buyer

* The Proceeds from the sale of the Relinquished Property are used to pay in full the Intermediary's note to the Taxpayer; the proceeds may be paid directly to the taxpayer

*Note that in this transaction, the Intermediary is actually entering into the chain of title on the Relinquished Property.

Reverse exchanges are the most complex of all exchange services. They require extensive planning and we recommend that you do not undertake a reverse exchange without the assistance of an experienced and knowledgeable intermediary such as NCS Exchange Professionals.



SIMULTANEOUS EXCHANGE

A simultaneous exchange occurs when both the relinquished property and the replacement property close and record on the same day. This seemingly simple transaction is littered with pitfalls. For example, if the properties are located in different counties, it is highly unlikely that the closing will take place on the same day. If two different title, escrow, closing firms or attorneys are involved, it is virtually impossible for both to have the funds to close in their possession on the same day.

However, the use of a Qualified Intermediary such as NCS Exchange Professionals ensures that if these problems do arise, the exchange will not fall through. The §1031 regulations contain what is referred to as a "Safe Harbor" provision, which does provide that in the event a facilitator or intermediary, such as NCS Exchange Professionals, is used in a simultaneous exchange, and the transaction proves not to be simultaneous, the exchange will not fail simply for that reason.



IMPROVEMENT, CONSTRUCTION, OR BUILT TO SUIT EXCHANGE

This type of exchange occurs when the Exchanger uses exchange proceeds to improve existing property or to improve or develop new replacement property. The improvement exchange can occur in the context of a delayed or reverse exchange.

Such construction or improvements can be accomplished as part of the exchange process, with payments to contractors and other suppliers being made by the facilitator out of funds held in a trust account. Therefore, if the replacement property is of lesser value than the relinquished property at the time of the original transaction, the improvement or construction costs can bring the value of the replacement property up to an exchange level or value, which would allow the transaction to remain tax-free. All improvements must be made within the 180 day time-frame allotted to designate replacement property.



BUSINESS OR PERSONAL PROPERTY EXCHANGE

The Internal Revenue Code Section §1031 does allow the exchange of many types of property other than real estate. Investors may exchange, for example, rail cars, trucks, ships, classic cars or livestock, among other assets. Business exchanges are a common transaction, but the personal property exchanged must still be like-kind. Generally, to qualify as like kind the relinquished and replacement personal property must be in the same Product Class. There are 13 Product Classes:

- * Office furniture, fixtures and equipment
- * Information systems (excludes computers)
- * Data handling equipment (excludes computers)
- * Airplanes and helicopters (excludes commercial)
- * Automobiles and taxis
- * Buses
- * Light general purpose trucks

- * Heavy general purpose trucks
- * Railroad cars and locomotives (excluded commercial)
- * Tractor units for use over-the-road
- * Trailers and trailer mounted containers
- * Vessels, barges, and similar water-transportation equipment
- * Industrial steam and/or electric generation distribution systems

Some personal property and business items are not exchangeable, such as goodwill or inventory. Contact NCS Exchange Professionals to determine if you can exchange your business or personal property.



GLOSSARY OF TERMS

ACCOMMODATOR or QUALIFIED INTERMEDIARY – A person or other entity who assists the Exchanger to effect a tax-deferred exchange by holding the exchange proceeds and acting as the principal in the sale of the relinquished property and purchase of the replacement property. The intermediary cannot be the taxpayer, a related party, or an agent of the taxpayer.

BOOT – Boot is any type of property received in an exchange that is not like kind, such as cash. In an exchange, any funds not used to purchase the replacement property will be called boot and might be taxed.

CONSTRUCTIVE RECEIPT – The critical issue in a delayed exchange is whether the Exchanger has control over the proceeds during the exchange period.

LIKE KIND PROPERTY – Refers to the nature or quality of the property the Exchanger gives up or receives in the exchange, such as real property for real property. Real property does not have to be similar in use such as raw land for raw land. Raw land may be exchanged for any other real property that will be used in a trade or business or held for investment. However, real property located in the United States and real property located outside of the United States is not like kind.

RELATED PARTY – IRC _267 (b) and 707(b) (1) defines related party as any person or entity bearing a relationship to the Exchanger such as: members of a family – brothers, sisters, spouse, ancestors and lineal descendants; a grantor or fiduciary

of any trust; two corporations which are members of the same controlled group or individuals; corporations and partnerships with more than a 50% direct or indirect ownership of the stock, capital or profits in these entities.

RELINQUISHED PROPERTY (Property Sold) – The property given up by the Exchanger in the §1031 exchange transaction.

REPLACEMENT PROPERTY (Property Bought) – The property the Exchanger acquires in a §1031 exchange transaction.

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