

1031 EXCHANGE

By Richard Gacek, Gacek Design Group

5 Details to know about the 1031 Exchange

You may be wondering why an architectural consulting and interior design firm is providing information on 1031. Well, at Gacek Design Group, we not only believe that information is knowledge, we also know that the more we understand the commercial landscape, the more we are able to collaborate as partners and work towards a successful result. A differentiating feature of our firm is the value we place on research, so we reviewed some credible sources and as a result outlined details to know about the 1031 Exchange.



Richard Gacek

1031 Exchange is defined as a swap of one business or investment asset for another. Since most swaps are taxable as sales, 1031 Exchange allows no tax or limited tax due at the time of the exchange. The IRS's Like-Kind Exchanges under IRC Code Section 1031 explains it as follows: Whenever you sell business or investment property and you have a gain, you generally have to pay tax on the gain at the time of sale. IRC Section 1031 provides an exception and allows you to postpone paying tax on the gain if you reinvest the proceeds in similar property as part of a qualifying like-kind exchange. Gain deferred in a like-kind exchange under IRC Section 1031 is tax-deferred, but it is not tax-free. The exchange can include like-kind property exclusively or it can include like-kind property along with cash, liabilities and property that are not like-kind. If you receive cash, relief from debt, or property that is not like-kind, however, you may trigger some taxable gain in the year of the exchange. There can be both deferred and recognized gain in the same transaction when a taxpayer exchanges for like-kind property of lesser value.

Who Qualifies:

Owners of investment and business property. Individuals, C corporations, S corporations, partnerships (general or limited), limited liability companies, trusts and any other taxpaying entity may set up an exchange of business or investment properties for business or investment properties.

Make Sure Your investment is Like-Kind:

According to Kayleigh Kulp, special to CNBC, to be eligible for the tax benefits of a 1031 exchange, you must exchange "like" investments of equal or greater value, reinvesting the net equity and having the same or greater amount of debt. Most commonly it is investment property, though it could also be art, collectibles and equipment.

Close within 6 Months:

The second timing rule in a delayed exchange relates to closing. You must close on the new property within 180 days

of the sale of the old. Note that the two time periods run concurrently. That means you start counting when the sale of your property closes. If you designate replacement property exactly 45 days later, you'll have 135 days left to close on the replacement property.

If you receive cash, it's taxed:

Robert W. Wood, tax lawyer and Forbes Contributor, states: You may have cash left over after the intermediary acquires the replacement property. If so, the intermediary will pay it to you at the end of the 180

days. That cash—known as "boot"—will be taxed as partial sales proceeds from the sale of your property, generally as a capital gain.

Beware of schemes:

Taxpayers should be wary of individuals promoting improper use of like-kind exchanges. Typically they are not tax professionals. Sales pitches may encourage taxpayers to exchange non-qualifying vacation or second homes. Many promoters of like-kind exchanges refer to them as "tax-free" exchanges not "tax-deferred" exchanges.

Taxpayers may also be advised to claim an exchange despite the fact that they have taken possession of cash proceeds from the sale. Also, consult a tax professional or refer to IRS publications listed below for additional assistance with IRC Section 1031 Like-Kind Exchanges. *

*Publication 544, Sales and Other Dispositions of Assets; Form 8824, Like-Kind Exchanges (PDF); Form 4797, Sales of Business Property

Richard Gacek is owner and principal designer at Gacek Design Group. ■

See What's Inside...

Learn More About 1031

215.862.9038 **gacekdesign.com** **Gacek Design Group**