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Section 1031, Would You Like to Sell or Exchange?

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THE SALE

- Capital Gain
- 1231 Gain/Loss
- 1245 Recapture
- 1250 Recapture/Unrecapture

1031 EXCHANGE (NO GAIN)

- Exchange of Property Used
- Trade/Business or Investment
- Like-Kind Property
- Trade/Business or Investment

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ALL OKAY

- Trade/Business for Trade/Business
- Trade/Business for Investment
- Investment for Trade/Business
- Investment for Investment

ADVANTAGES

- Potential 100% Tax Deferred
- Property May Be More Marketable
- Change in Business/Investment Strategy
- Less Cash Required
- Continuously Invested

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DISADVANTAGES

- More Complicated
- Property Must Be Like-Kind/Class
- Strict Time Requirements
- Lower Depreciable Basis

KEY ISSUES OF IRC 1031

- Boot
- Timing Issue
- Like-Kind Property Issue
- Dollar Issue

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BOOT (GAIN)

- Receipt of Cash
- Other Unlike-Kind Property
- Debt Relief
- Notes Received

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TIMING OF EXCHANGE

- Simultaneous Exchange
- Deferred Exchange
- Reverse Exchange

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SIMULTANEOUS EXCHANGE

- Exchange of Properties Takes Place at the Same Time; Simultaneously
- Example: Trade-In Your Truck for Another Truck
  - Give Boot of $5,000
  - Finance $2,500 of $5,000

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DEFERRED EXCHANGE

- Qualified Intermediary
- Identification Rules
  - Identify Property Within 45 Days of Closing Transferred Property
- Timing Requirements
  - 180 days
- 3 Properties

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DEFERRED EXCHANGE

- Property Sold $100,000
- Basis of Property Sold $40,000
- Possible Replacement Property Values: $25,000; $70,000; $110,000

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LIKE-KIND PROPERTY ISSUES

- Depreciable Tangible Personal Property
- Real Property
- Intangible Personal Property and Non-Depreciable Personal Property

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EXCLUSIONS FROM 1031

- Stock in Trade or Other Property Held Primarily for Sale
- Stocks, Bonds, or Notes
- Interests in a Partnership
- Goodwill (Intangible)

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DEPRECIABLE TANGIBLE PERSONAL PROPERTY

- Like-Kind Means Like-Class
- General Asset Classes
- Product Classes

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REAL PROPERTY

- Real Property Exchanged for Other Real Property
- Easy to Qualify
- Exception – Real Property in U.S. Exchanged for Real Property Outside U.S.
- May Fall Under Section 1245 Property

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INTANGIBLE OR NON-DEPRECIABLE PERSONAL PROPERTY

- Intangible Has No Physical Value
- Qualify if Properties Are of Like-Kind
- Like-Kind Based on Character or Nature
- Examples

DOLLAR ISSUE

- How Much Do I Have to Spend?
- Can I Have Less Debt?
- What is My Basis?
- Part Gain, Part Sale?

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MULTIPLE PROPERTIES

- Separate the Properties Transferred and Received
- Offset All Liabilities
- Apply Section 1031 Rules
- Determine Basis of Each Exchange

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REPORTING - 8824

- Part 1: Information on Exchange
- Part 2: Related Party Information
- Part 3: Gain/Loss and Basis
- Part 4: Deferral of Gain

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OTHER ISSUES

- Related Party
- Reverse Exchange
- 179 Expensing
- Change in Tax Law

PLANNING DECISION

- Future
- Retirement
- Death
- Changes in Life
- Cash Flow

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