

# CHICAGO DEFERRED EXCHANGE COMPANY

## REVENUE RECONCILIATION ACT OF 1989

**Foreign Property No Longer Like-Kind to U.S. Property:** Section 7601 of the Omnibus Budget Reconciliation Act of 1989 made two changes affecting Section 1031. First, Section 1031(h) provides that real property located in the United States and real property located outside the United States will not be treated as property of like-kind. However, this change applies only for purposes of Section 1031 and thus does not affect analysis under Section 1033(g).

Code §1031(h).

**Related Party Exchanges:** The Omnibus Budget Reconciliation Act of 1989 restricted certain like-kind exchanges between related parties by adding Sections 1031(f) and (g) to the Internal Revenue Code. The objective of this legislation was to discourage what the Treasury Department viewed as an abuse of Section 1031 to shift cost basis among properties held by related entities. An example of an "abusive" transaction is where Taxpayer A owns high basis property 1, Taxpayer B, (a related entity) owns low basis property 2, and the goal is to dispose of the low basis property without recognized gain. Prior to enactment of Section 1031(f), Taxpayers A and B could exchange properties, and Taxpayer A's high basis would become the "substitute basis" in property 2, which could then be sold with little or no tax consequence. Under Section 1031(f), Taxpayer A must continue to hold property 2, and Taxpayer B must continue to hold property 1, for two years following the exchange. The result of the legislation is that the basis shift has still occurred, but its benefits cannot be realized for two years.

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