

## HELD FOR INVESTMENT: GENERAL STATUTORY REQUIREMENTS

- 1 Both the property surrendered and the property received must be held either for productive use in a trade or business, or for investment.
- 2 The property surrendered and the property received must be of "like-kind."
- 3 The exchange must be a reciprocal transfer of properties as distinguished from a sale and repurchase.

### BUSINESS/INVESTMENT

Section 1031 does not define either the term "productive use in a trade or business" or "for investment". The Regulations provide that otherwise unproductive property held by a "non dealer" for future trade or business use or for future appreciation constitutes property held for investment. The relevant qualified use is the use of each property in the taxpayer's hands. The use of either property in the hands of the other party to the exchange is irrelevant.

Qualifying property must be used in a trade or business in which the taxpayer is engaged. The test is applied at the time of the exchange without regard to the taxpayer's motive prior to the exchange.

In Private Letter Ruling 8103117 the Service ruled that unimproved real estate qualified for a like-kind exchange where the taxpayer abandoned his original intention to construct a personal residence on it and thereafter held it only for investment. A minimum amount of incidental personal use by a taxpayer will not taint qualifying investment property.

The language of Section 1031(a) states that an exchange of like-kind property will qualify provided the property received is "to be held for" productive use or investment. This reflects the continuity of ownership concept underlying non-taxable exchanges. (Reg. 1.1002-1(c)). How long the property received must be held by the taxpayer is uncertain. Depending on the facts and circumstances, the Service may construe subsequent dispositions, taxable or nontaxable, as evidence that the property was not acquired "to be held" so that the initial exchange would be taxable.

Private letter ruling 8429039 has enunciated a safe harbor stating that 2 years of business use is sufficient to meet this test.

Code §1031(a)(1), Reg. §1.1031(a)-1(a), (b).

