

# Northern 1031 Exchange\*

Preserve profits and build wealth through tax deferred exchange

## SAFETY

Keeping our clients exchange funds secure is our number one priority. All Northern 1031 Exchange deposits are held in non-commingled, secure escrow accounts here at Northern Bank designed to preserve principal. Each exchange account is separately identified by using the clients name and tax identification number.

## SECURITY

All wire instructions received from closing attorneys and settlement agents are verbally verified. Wires are not released by Northern Bank until verbal confirmation by QI is received. Any private information is transmitted through secure encrypted email server.

## RELIABILITY

Our Exchange Facilitators and Administration staff are available throughout the exchange process. They are happy to answer any questions along the way and guide clients through this complicated process.

## THE CODE

No gain or loss shall be recognized on the exchange of REAL property held for productive use in a trade or business or for investment if such property is exchanged solely for REAL property of like-kind which is to be held either for productive use in a trade or business or for investment.

## TIME REQUIREMENTS

### *45 Day Identification Period:*

The taxpayer must identify potential replacement property(s) by midnight of the 45th day from the date of sale

### *180 Day Exchange Period:*

The taxpayer must acquire the replacement property by midnight of the 180th day, or the date the taxpayer must file its tax return (including extensions) for the year of the transfer of the relinquished property, whichever is earlier.

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## IDENTIFICATION RULES

*Three Property Rule:* The taxpayer may identify up to three properties of any fair market value.

*200% Rule:* The taxpayer may identify an unlimited number of properties provided the total fair market value of all properties identified does not exceed 200% of the fair market value of the relinquished property.

*95% Rule:* If the taxpayer identifies properties in excess of both of the above rules, then the taxpayer must acquire 95% of the value of all properties identified.

## THE LIKE KIND PROPERTY MYTH

Property must be exchanged for “like-kind” property. But “like-kind” simply means that real property must be exchanged for real property. All real property is like-kind, so a whole interest may be exchanged for a tenancy-in-common interest; one property may be exchanged for more than one property; a duplex may be exchanged for a fourplex; a single family residence may be exchanged for a motel; vacant land may be exchanged for an office building, etc.

## IRC SECTION 1031 – EXCEPTIONS

- Personal residences do not fall under the guidelines for a 1031 exchange.
- Vacation second homes used primarily for personal use.
- Stock in trade or other property purchased primarily for quick resale.
- Stocks, bonds, or notes.
- Other securities or evidences of indebtedness or interest.
- Interests in a partnership.
- Certificates of trust or beneficial interest.

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## HISTORY AND STATUTORY DEVELOPMENT

When income taxes were first imposed in 1918, gain or loss recognition was required on all dispositions of property. Provision for nonrecognition of gain or loss on the exchange of property was introduced in 1921.

Limitations on the scope of exchange activities were imposed in 1923 by excluding stocks, bonds, notes, trust certificates and other securities from the nonrecognition provisions of the Revenue Act of 1921.

The substantive provisions of I.R.C. § 1031 remained basically the same until The Tax Reform Act of 1984 where time limits were introduced for non-simultaneous exchanges and interests in partnership were added to the types of properties excluded from nonrecognition treatment. The 1984 change to the code was a direct result of the Starker decisions made in 1979 by the Ninth Circuit Court of Appeals which established the legal precedent that there could be a delay between transfer of ownership of the RQ and receipt of the RP.

The Omnibus Budget Reconciliation Act of 1989 added 1031(f) that stated exchanges between related parties would continue to qualify for deferral of gain provided neither the exchanger or the related person disposes within two years the property received in the exchange. In addition the 1989 Act added that property inside US and outside US are not properties of like-kind.

The best news in the history of exchanging occurred when on May 1, 1991, the IRS published the final regulation which gives specific and clear guidance for the conduct of a tax deferred exchange. This regulation covers the role of the qualified intermediary, assignment of contracts, control of escrow funds and identification requirements.

In addition, in April of 1990 an IRS Revenue Ruling authorized the use of direct deeding and IRS Form 8824 was published to simplify reporting of an exchange.

A major change to the rules occurred in October 2000 when IRS Revenue procedure 2000-37 was published to provide the rules to accommodate a reverse exchange. This "Safe-Harbor" procedure provides for an Exchange Accommodation Titleholder (EAT). The EAT can purchase the relinquished property or the desired replacement property so the taxpayer can proceed with the exchange.

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The last major change to the IRS code was the Tax Reform Act of 2017. Beginning after Dec. 31, 2017, like-kind exchange applies only to real property held for use in a trade, business or for investment. Real property includes land and generally anything built on or attached to it. An exchange of real property held primarily for sale still doesn't qualify.

Exchanges of personal or intangible property, such as machinery, equipment, vehicles, artwork, collectibles and patents, generally don't qualify. A transition rule applies to some exchanges made before Dec. 31, 2017. Certain exchanges of mutual ditch, reservoir or irrigation stock are still eligible.

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