NAR Issue Summaries

Federal Tax / Section 1031 Like-Kind Exchange

NAR Committee:

Commercial Federal Policy Committee

What is the fundamental issue?

Since 1921, U.S. tax law has recognized that the exchange of one investment or business-use property for another of like-kind results in no change in the economic position of the taxpayer, and therefore, should not result in the immediate imposition of income tax. The like-kind exchange rules permit the deferral of taxes, so long as the taxpayer satisfies numerous requirements and consummates both a sale and purchase of replacement property within 180 days.Real estate investors and commercial real estate practitioners place a very high priority on retaining the current like-kind exchange rules.

I am a real estate professional. What does this mean for my business?

The exchange rules often provide a real estate professional with an opportunity to facilitate two transactions: the sale of the relinquished property and the purchase of the replacement property. Any curtailment of the exchange rules could make both pieces of exchange transactions more difficult to conclude and would mean that many transactions would not take place. The like-kind exchange transaction is among the most important of all tax provisions for real estate investors and commercial real estate professionals.

NAR Policy:

NAR opposes any change that would undermine the deferral mechanisms associated with exchanges or lead to fewer transactions.

The like-kind exchange technique is fundamental to the real estate investment sector. The current law provides investors with a great deal of flexibility in managing their real estate portfolio. Real estate is essentially an illiquid asset that requires substantial commitments of cash. Flexibility is needed in order to assure the free movement of property and capital. This, in turn, results in economic growth and job creation.

Opposition Arguments:

Opponents of NAR policy may argue that deferring taxation of any investment is improper, especially when it has been disposed of. Moreover, with capital gains tax rates for most individuals at their lowest level since World War II (20% maximum), they may say the burden on investments is modest. Other opponents do not fully understand the way like-kind exchanges work and may believe they lead to tax-free, rather than tax-deferred, treatment. Still others fail to see the benefits that come to communities and the economy from the provision.

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Legislative/Regulatory Status/Outlook

During the presidential campaign of 2020, then-candidate Joe Biden's campaign listed the section 1031 like-kind exchange as an unwarranted loophole that largely benefits higher-income taxpayers and indicated that if elected, he would repeal it.

In early 2021, the Biden White House recommended to Congress that the tax deferral from like-kind exchanges be limited to $500,000 per taxpayer per year in order to help offset the cost of his infrastructure proposals. While this may seem like a large amount to many, such a limit would greatly diminish the use of section 1031 and seriously damage the real estate sector of the economy.

Working with members of Congress on both sides of the political aisle, NAR was able to convince enough lawmakers of the importance of keeping 1031 like-kind exchanges in place without changes.

In the current legislative and political climate, NAR does not consider 1031 like-kind exchanges to be in imminent danger, though the NAR Advocacy Group is vigilant in ensuring no new threats emerge. NAR is a leading member of a large coalition devoted to preserving the 1031 like-kind exchange. This group has funded two separated studies on the impact that repealing or limiting Section 1031 would have on the economy and on the real estate sector. Moreover, the coalition continues to have meetings with Members of Congress to explain the importance of tax-deferred exchanges in their states and districts. Also, NAR lobbyists continually stress the importance of keeping 1031 intact when meeting with Members and staff on other issues.

Current Legislation/Regulation (bill number or regulation)

None at this time.

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