

INCOME, EXCLUSIONS, ETC

¶505 Like-Kind Exchanges of Real Property

Like-kind exchanges limited to real property.—Like-kind exchanges are allowed only for real property after 2017. Thus, as under current law, no gain or loss is recognized on the exchange of real property held for productive use in a trade or business or for investment if that real property is exchanged solely for real property of like kind that will be held either for productive use in a trade or business or for investment. However, like-kind exchanges are not allowed for depreciable tangible personal property, and intangible and nondepreciable personal property (Code Sec. 1031(a)(1), as amended by the Tax Cuts and Jobs Act of 2017).

COMMENT

Although most real property is like-kind to other real property, disputes as to whether properties are genuinely like-kind are still likely to arise when an exchange involves limited or partial property interests, such as life estates, remainder interests, and tenancies-in-common.

As under current law, (1) real property is not eligible for a like-kind exchange if it is held primarily for sale (Code Sec. 1031(a)(2), as amended by the 2017 Tax Cuts Act); (2) real property in the United States and foreign real property are not like-kind (Code Sec. 1031(h), as amended by the 2017 Tax Cuts Act); and (3) an interest in a partnership that has elected out of subchapter K is treated as an interest in each of the partnership's assets, rather than a partnership interest (Code Sec. 1031(e), as amended by the 2017 Tax Cuts Act).

CAUTION

The statute no longer expressly provides that stock in a mutual ditch, reservoir or irrigation company described in Code Sec. 501(c)(12)(A) is eligible for a like-kind exchange if it is treated as real property under applicable state law (Code Sec. 1031(i), as stricken by the 2017 Tax Cuts Act).

The Report by the House Ways and Means Committee notes that real property eligible for like-kind exchange treatment under present law should continue to be eligible for like-kind exchange treatment. Specifically, stock in a mutual ditch, reservoir, or irrigation company should still be eligible for a like-kind exchange if the shares are treated as real property or as an interest in real property under applicable state law at the time of the exchange (Report of the Committee on Ways and Means on H.R. 1, Rep. 115-409, note 476). However, the Conference Committee Report does not contain similar language.

Transition rule. The restriction of like-kind exchanges to real property does not apply to an exchange if the relinquished property is disposed of or the replacement property is received on or before December 31, 2017 (Act Sec. 13303(c)(2) of the 2017 Tax Cuts Act).

COMMENT

This transition rule allows taxpayers to complete a deferred or reverse-Starker exchange that involves depreciable tangible personal property or intangible and nondepreciable personal property. However, the 45-day identification deadline and the 180-day exchange deadline still apply.

Effective date. The amendments made by this section generally applies to exchanges completed after December 31, 2017 (Act Sec. 13303(c) of the Tax Cuts and Jobs Act). However, the amendments do not apply to an exchange if (1) the property disposed of by the taxpayer in the exchange is disposed of on or before December 31, 2017; or (2) the property received by the taxpayer in the exchange is received on or before December 31, 2017.