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Like-Kind Exchanges

Chapter 9
Generally, no gain (or loss) is recognized if business or investment property is exchanged solely for “like-kind”.

Property, if “unlike”, must be recognized to the extent it is unlike in exchange – (i.e.,) boot.

Like-kind rules do not apply to property held for sale to customers in business --some timber property may not apply.
Like-kind Exchanges
(Continued)

- Property received in the exchange must only be of a like-kind to that given, not necessarily of like grade or quality.
- Exchange must be completed by 180th day after the transfer, or due date of transferor’s tax return for the year.
- Property to be received in exchange must be identified before 45 days after transfer date.
If no gain (loss) is recognized, adjusted basis of property acquired is the same as adjusted basis of the property transferred.

When two properties are exchanged for one, basis is proportionally allocated.

Adjusted basis of property transferred, minus money and FMV of “other” property received, plus gain recognized in exchange or minus any loss.
RR 72-515 -- taxpayer conveyed to U.S. woodland with virgin and second growth for woodland with virgin timber
  - IRS ruled it was like-kind

RR 76-253 -- taxpayer conveyed land to state, reserving timber, and received state-owned woodland of lesser value in return
  - IRS ruled it was like-kind
Timber Applications (Continued I)

- RR 78-163 -- exchange of timberland for bare land ruled like-kind by IRS -- difference was in grade and quality, not their nature or character
- LR 96211012 -- IRS ruled that exchange of scenic conservation easement for fee interest in timberland qualifies as like-kind under Section 1031
LR 8818034 -- forest products company exchanged tree farm in one state for timberland in other state as like-kind

OR v. Comm. -- in exchange of land for timber rights only, Court ruled like-kind requirements were not met. Under Oregon law transfer of standing timber was a transfer of personal property, and thus not like-kind
Courts And Like-Kind

- Tax Courts generally defer to state law -- where standing timber is deemed an interest in realty, its exchange for bare land should qualify under IRC § 1031 as like-kind.

- LR 9525002 -- exchange of land and timber for standing timber only subject to a cutting contract.
  - IRS ruled that nature or character of property was not like-kind.
Fee interest in standing timber given by LO for $517,000; purchaser given 2 years to enter and cut the timber; receipts held in escrow were exchanged for approximately 900 acres of reforested land.

Court reasoned case law supported IRS and LO arguments, but declined to rule on issues.

- LO won on other technical grounds
- But, Court left key issues unresolved