



Tax Season Issues

As the tax filing deadlines for corporations and individuals draw near, taxpayers who completed or are in the middle of a like-kind exchange under IRC Section 1031 have some special considerations when preparing their tax return.

Reporting Completed Exchange and IRS Form 8824:

A like-kind exchange must be reported to the IRS in the year in which it occurs on IRS Form 8824. Taxpayers can download the form at <http://www.irs.gov/pub/irs-pdf/f8824.pdf>, and will need the following information:

- Descriptions of the relinquished property (or properties)
- Adjusted basis of relinquished property and realized gain
- Cash received or paid
- Liabilities relieved or assumed
- Dates of the replacement property identification and transfer
- Value of the replacement property (and any other non-like kind property received)
- Gain or loss associated with sale of non-like kind property
- Form 8824 also includes a requirement that relationships between the taxpayer and other parties be disclosed

Form **8824** Like-Kind Exchanges (and section 1043 conflict-of-interest sales) OMB No. 1545-1100
Department of the Treasury Internal Revenue Service Attach to your tax return. **2014**
▶ Information about Form 8824 and its separate instructions is at www.irs.gov/form8824. Attachment Sequence No. 109

Part I Information on the Like-Kind Exchange

Note: If the property described on line 1 or line 2 is real or personal property located outside the United States, indicate the country.

1 Description of like-kind property given up: _____

2 Description of like-kind property received: _____

3 Date like-kind property given up was originally acquired (month, day, year) 3 MM/DD/YYYY

4 Date you actually transferred your property to other party (month, day, year) 4 MM/DD/YYYY

5 Date like-kind property you received was identified by written notice to another party (month, day, year). See instructions for 45-day written identification requirement 5 MM/DD/YYYY

6 Date you actually received the like-kind property from other party (month, day, year). See instructions 6 MM/DD/YYYY

7 Was the exchange of the property given up or received made with a related party, either directly or indirectly (such as through an intermediary)? See instructions. If "Yes," complete Part II. If "No," go to Part III Yes No

Part II Related Party Exchange Information

8 Name of related party _____ Relationship to you _____ Related party's identifying number _____

Address (no, street, and apt., room, or suite no., city or town, state, and ZIP code) _____

9 During this tax year (and before the date that is 2 years after the last transfer of property that was part of the exchange), did the related party sell or dispose of any part of the like-kind property received from you (or an intermediary) in the exchange or transfer property into the exchange, directly or indirectly (such as through an intermediary), that became your replacement property? Yes No

10 During this tax year (and before the date that is 2 years after the last transfer of property that was part of the exchange), did you sell or dispose of any part of the like-kind property you received? Yes No

If both lines 9 and 10 are "No" and this is the year of the exchange, go to Part III. If both lines 9 and 10 are "No" and this is not the year of the exchange, stop here. If either line 9 or line 10 is "Yes," complete Part III and report on this year's tax return the deferred gain or (loss) from line 24 unless one of the exceptions on line 11 applies.

11 If one of the exceptions below applies to the disposition, check the applicable box:

a The disposition was after the death of either of the related parties.

b The disposition was an involuntary conversion, and the threat of conversion occurred after the exchange.

c You can establish to the satisfaction of the IRS that neither the exchange nor the disposition had tax avoidance as one of its principal purposes. If this box is checked, attach an explanation (see instructions).

For Paperwork Reduction Act Notice, see the instructions. Cat. No. 12231A Form **8824** (2014)

Extending Return Filing Deadline:

IRC Section 1031(a)(3)(B) holds that the deadline for acquiring replacement property is the earlier of (i) "the day which is 180 days after the date on which the taxpayer transfers the property relinquished in the exchange" or (ii) "the due date (determined with regard to extension) for the transferor's return of the tax imposed by this chapter for the taxable year in which the transfer of the relinquished property occurs".

This means that if the 180th day following the sale of the relinquished property falls **after** the taxpayer's federal tax return deadline, the taxpayer must file for an extension to get the full benefit of the 180-day exchange period.



Benefits of "Tax Straddling":

Once a taxpayer has sold relinquished property as part of a 1031-exchange, the earliest the Qualified Intermediary can release the exchange funds is the 46th day (the day after the identification time period has ended) or, in some cases, the 181st day (the day when the 1031 Exchange time period is complete). Thanks to installment sale rules (§453 / Publication 537), if the funds are returned to the taxpayer in the year following the sale, "tax straddling" may allow the taxpayer a one year tax deferral on the sale. Combining §1031 with §453 permits the cash received from the Qualified Intermediary to be treated as a payment in the year of actual receipt, rather than in the year the relinquished property was sold.

For example, if a taxpayer, with the bonafide intent to complete an exchange, sold relinquished property on December 1, 2014, but did not identify replacement property by the 45th day and received the exchange funds from the Qualified Intermediary on January 15, 2015 then the taxpayer has the option of reporting the sale on their 2015 tax return instead of their 2014 tax return, thereby deferring payment of taxes on the sale until 2016 (the due date of their 2015 tax return).

Taxpayers seeking to take advantage of the "tax straddling" aspects of an installment sale should consult their tax advisors since this treatment does not apply to all sales, and any gain attributed to debt relief will still have to be recognized in the year of sale.

Parked Property Tax Reporting:

If an exchange involves an exchange accommodation titleholder (an "EAT") holding a property in either a reverse or improvement exchange, there are additional tax reporting requirements. Revenue Procedure 2000-37 requires both the EAT and the taxpayer to "report the acquisition, holding, and disposition of the property as provided in this revenue procedure".

This requires that the taxpayer's return reflects that the EAT, and not taxpayer, owned the parked property. Therefore, the taxpayer cannot claim depreciation during the time the EAT held the parked property. It also means complying with the provisions of the Master Lease Agreement between the EAT and the taxpayer in regards to the classification of income and expenses.

It will also be necessary for the taxpayer to provide its EAT with income and expense information the EAT may need to report its ownership of the parked property. Frequently expenses such as real estate taxes and debt payments can only be deducted by the legal owner of the property or borrower under the loan. It is important the EAT's and taxpayer's returns are consistent in their representation of such items.

If you are involved in a reverse or improvement exchange and have questions about how to reflect a parked property on your return please contact your EAT for more information.