

Do Your Business Assets Qualify for a Like-Kind Exchange?

by Victor Kinon on March 15, 2012

When businesses buy and sell assets like real property, equipment, or even intangibles like intellectual property, potential tax liabilities are always an important consideration. While earnings generated from the sale of a business property are generally assessed at the time of the sale, there are several tools available for businesses hoping to defer their tax obligation.

One of the most common is a “like-kind exchange” under Section 1031 of the Internal Revenue Code. In basic terms, a like-kind exchange allows businesses to postpone paying tax on the gain if they reinvest the proceeds in similar property.

Of course, there are a number of requirements that must be satisfied in order to qualify as a like-kind exchange. This post addresses one of the most important questions—are your assets considered like-kind?

Both the relinquished property you sell and the replacement property you buy must meet certain criteria. First, they must both be held for use in a trade or business or for investment. Second, both properties must be similar enough to qualify as “like-kind,” meaning they are of the same nature, character, or class.

With some exceptions, most real estate will be like-kind to other real estate. One notable exception is that domestic property cannot be exchanged for non-domestic property.

While real property and personal property can both qualify under Section 1031, it is important to note that real property can never be like-kind to personal property. In addition, the rules for determining whether personal property qualifies as “like-kind” are much more restrictive. For instance, cars are not considered like-kind to trucks.

Finally, certain types of property are specifically excluded. Section 1031 does not apply to exchanges of:

- Inventory or stock in trade
- Stocks, bonds, or notes
- Other securities or debt
- Partnership interests
- Certificates of trust

Of course, this post provides only a brief overview of 1031 like-kind exchanges. We also caution our readers about sale pitches and other scams that promote improper use of like-kind exchanges. In order to complete a successful like-kind exchange transaction, we

recommend consulting with our experienced attorneys about both the business and tax implications.

Source: IRS