CLIENT REPORT

Selling Investment Property - Like-Kind Exchanges

Dear Client:

A well known, but sometimes overlooked, way to alter investment holdings without paying tax at the time of the transaction is through the use of "like-kind" exchanges. In a like-kind exchange, investment property is traded for other investment property. The person transferring one piece of property receives different property but keeps the same basis as that for the old property. That way, the gain is deferred while other tax attributes are preserved.

Of particular interest are the flexible features that make a like-kind exchange an especially useful technique. First, properties do not have to be of identical type to qualify as like-kind. To take a few examples, commercial buildings have been exchanged for unimproved lots, farm land for city lots, and even cooperative housing stock carrying occupancy rights for a condominium interest in the same property. One caution: like-kind exchanges do not work with all types of investment property. For instance, neither stocks and bonds nor partnership interests qualify.

Second, properties do not have to be exchanged at the same time. Therefore, it is not necessary to have already located the exchange property to make a like-kind exchange (an important consideration if the end of a tax year is looming). It is sufficient that the exchange property be identified within 45 days after the relinquished property is given up, and that the identified property be received within 180 days. (However, if the tax return due date for the original transfer year occurs before the end of the 180-day period, the identified property must be received on or before the tax return due date).

To illustrate how these exchanges can work, consider the following example:

Fred owns an interest in an office building. He bought it years ago for $10,000, but today it's worth at least $100,000. Fred has decided to move to Florida and convert his office building interest into an ownership share in a Florida apartment building. Allison wants to buy Fred's office building interest, and for tax reasons she wants to own the building interest by December 31. Fred wants to avoid the high tax he would have to pay after a cash sale.

A solution is a deferred like-kind exchange. Fred transfers his building interest to Allison on December 31. Allison agrees to locate and buy a Florida apartment building interest of equal value suitable to Fred. (Fred can even insist that Allison put the purchase price in escrow, so long as Fred has no independent right to the cash). After Allison finds and buys the Florida property, she transfers it to Fred, and the like-kind exchange is completed. Provided the 45/180 day rules along with other requirements are satisfied, Fred receives the Florida property tax-free, with the same basis and holding period he had in the office building.

As you can see, a like-kind exchange can be an excellent tool that can be used to achieve investment goals. Even in situations where it is impractical to arrange a completely tax-free transaction, like-kind exchanges may still reduce the immediate tax consequences of altering your investment holdings. Any transaction must be carefully structured. We would be happy to discuss the detailed requirements with you. Please do not hesitate to call.

Sincerely yours,

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