



# NEW ENGLAND REAL ESTATE JOURNAL

Friday, September 17, 1999 THE LARGEST BUSINESS PUBLICATION OF ITS KIND IN THE NATION

By Robert Buckner, Asset Preservation

## How long before a property is considered a "like-kind"

**I**RC§1031 states that property "held for productive use in a trade or business or for investment" must be exchanged for like-kind property (held for productive use in a trade or business). Each week, the professionals at Asset Preservation are asked numerous times exactly how long a property needs to be held to be considered an investment property by the IRS. There is much confusion and misinformation among real estate agents and investors on the issue of what is viewed as "held for investment."

Neither the IRS nor the Regulations provide a minimum holding period for property to qualify as "held for investment." (The regulations do state, however, that unproductive real estate held by a non-dealer for future use or future appreciation, is held for investment.)

In fact, there is no safe holding period for property to automatically qualify as being

"held for investment." Time is only one factor at which the IRS looks in determining the Exchanger's intent for both the relinquished and replacement properties. The IRS may look at all the facts and circumstances of an investor's situation to determine the Exchanger's true intent for both properties involved in an exchange.

In one private letter ruling (PLR 8429039), the IRS stated that a minimum holding period of two years would be sufficient. Although a private letter ruling does not establish legal precedent for all investors, there are many advisors who believe two years is a conservative holding period, provided no other significant factors contradict the investment intent.

Other advisors recommend that Exchangers hold property for a minimum of at least twelve months. The reason for this is twofold: (1) A holding period of 12 or more months means the investor will usually reflect it as an investment property in

two filing years. (2) In 1989, Congress had proposed a one year holding period for both the relinquished and replacement properties. Although this proposal was never incorporated into the tax code, some believe it represents a reasonable minimum guideline.

The investor's "intent" in holding both the relinquished and replacement properties is the central issue. The courts have qualified exchanges involving properties held as few as three months (Joseph R. Bolker 1983) and disqualified others held for more than two years. Each Exchanger and their advisors should be able to substantiate properties relinquished and acquired in a tax deferred exchange were "held for investment". The shorter the holding period, the stronger the evidence should be to prove the proper intent.

**Robert Buckner is the New England division manager for Asset Preservation, Inc., a subsidiary of Stewart Title Co.**