

1031 TAX DEFERRED EXCHANGES

"CAN EASEMENTS BE EXCHANGED FOR REAL PROPERTY?"



Compliments of

IRC Section 1031 does not limit "like-kind" property to certain types of real estate. The types of real estate which can be exchanged are extremely broad. The term refers to the nature or character of the property, rather than its grade or quality. In many cases, an easement can be exchanged for a fee interest.

QUALIFYING REAL PROPERTY

Real property must be exchanged for "like-kind" real property. Any real estate *held for productive use in a trade or business or for investment* – whether improved or unimproved – is considered "like-kind." Like-kind examples:

- Unimproved ⇨ Improved Property
- Fee ⇨ Leasehold with 30+ years to run
- Vacant land ⇨ Small retail center
- Duplex ⇨ Commercial property
- Single family rental ⇨ An apartment
- Industrial Property ⇨ Rental resort property

WHAT ABOUT EASEMENTS?

Although it is important to look to the treatment of easements under the applicable state laws, in many cases an easement is considered "like-kind" to any other "like-kind" real property held for productive use in a trade or business or for investment.

QUALIFYING EXCHANGES OF EASEMENTS

An agricultural conservation easement in perpetuity in a farm found to be real property, for a fee simple interest in real property.

- *IRS Letter Ruling 9232030*

An exchange of agricultural easements over two farms for fee-simple title in a different farm.

- *IRS Letter Ruling 9851039*

A perpetual conservation easement encumbering real property for the fee simple interest in either farm land, ranch land, or commercial real property.

- *IRS Letter Ruling 9601046*

A scenic conservation easement, found to be real property under state law, for a fee simple interest in timber, farm land, or ranch land.

- *IRS Letter Ruling 9621012*

Call the professionals toll-free at Asset Preservation for more detailed information on "like-kind" issues.



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