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NEWSLETTER

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MEMBER OF NEW YORK STATE BAR ASSOCIATION, WESTCHESTER COUNTY BAR ASSOCIATION AND PRESIDENT OF THE YONKERS LAWYERS' ASSOCIATION

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IRC 1031 Tax Deferred Exchanges

Section 1031 under the Internal Revenue Code (IRC) allows you to roll-over all of the proceeds received from the sale of an investment property into the purchase of one or more other like-kind investment properties. At closing on the sale of your property proceeds are transferred to a third party--called a facilitator or qualified intermediary--who holds them until they are used to acquire the new property. Your taxes (capital gains and depreciation recapture taxes) are actually deferred (postponed) until the day you decide to outright sell your property and retain the sales proceeds.

Why should you consider a tax-deferred exchange? There are various reasons why one would do a tax-deferred exchange, the following are some examples:

1. Defer paying capital gains tax.
2. Relief from property management. You may have some apartment buildings which require significant management that you would like to exchange for retail stores, warehouses or malls requiring less management.
2. Upgrade. The areas your rental properties are located in have become economically depressed or are deteriorating and you would like to trade the properties for a better location.
3. If you have rental properties with problem tenants or properties that need expensive capital improvements or repairs and you would rather sell the properties and acquire other rentals with fewer problems.
4. You can preserve your equity from the sale of your property by not having to pay taxes on your net profits.

Any type of real estate used for business, trade or investment purposes will qualify. Examples are: apartments, office buildings, single family or condo rentals, raw land, farms, commercial, and industrial.

You are not limited to exchanging property similar or exactly like your present property. The IRS allows you to trade raw land for an apartment building, commercial mall, or a condo rental as long as you structure it as an exchange. For example, you can sell your

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self-operated gas station (trade property) and buy an apartment building (business property) and pay no taxes!

You cannot sell your home and use the proceeds to buy business or investment property. Nor can you sell business or investment property and buy a primary residence that you intend to live in shortly after acquiring it.

There are some interesting ways you can plan your exchange. For instance, you can sell your property to one party and buy your replacement property from another. You can sell one property and buy two, three or more replacements. Also, you can sell several properties and buy only one property with the sales proceeds.

We must pay careful attention to the timing rules set up by the IRS. When you sell your property(s) and title passes to the purchaser, the timing requirements to identify and acquire your replacement property(s) begin. You will have 45 days to produce a written list of up to three potential replacement properties delivered to your facilitator or qualified intermediary. This 45 day rule is strictly enforced and is not extended should the 45th day fall on a weekend or legal holiday.

The replacement property must be received by the taxpayer within the "exchange period," which ends within the earlier of . . . 180 days after the date on which the taxpayer transfers the property relinquished, or . . . the due date for the taxpayer tax return for the taxable year in which the transfer of the relinquished property occurs. This 180-day rule is also strictly enforced and is not extended if the 180th day should happen to fall on a weekend or legal holiday.

If you fail to properly and timely identify your potential replacement properties, or fail to acquire title to all of the replacement properties in time, the IRS could disallow your entire exchange.

To take advantage of the benefits under the IRC Section 1031 tax deferred exchange it is important to retain an experienced and knowledgeable law firm such as the Law Offices of James G. Dibbini to handle your transaction smoothly and successfully. If you are considering selling and/or buying an investment property in New York or Connecticut and/or have any questions regarding the IRC 1031 tax deferred exchange process please contact James G. Dibbini, Esq. at the Law Offices of James G. Dibbini.

Contact our office for a free consultation regarding any specific questions you may have.