

Timber Income Tax

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Like-Kind Exchanges

Chapter 9

Tax Free Like-Kind Exchanges

IRC § 1031

- Generally, no gain (or loss) is recognized if business or investment property is exchanged solely for “like-kind”
- Property, if “unlike”, must be recognized to extent it is unlike in exchange – i.e., boot
- Like-kind rules do not apply to property held for sale to customers in business -- some timber property may not apply
- Begin p 9.1

Like-kind Exchanges

(Continued)

- Property received in the exchange must only be of a like-kind to that given, not necessarily of like grade or quality
- Exchange must be completed by 180th day after the transfer, or due date of transferor's tax return for the year
- Property to be received in exchange must be identified before 45 days after transfer date
- See p 9.1

Adjusted Basis of Property

- If no gain (loss) is recognized, adjusted basis of property acquired is the same as adjusted basis of the property transferred
- When two properties are exchanged for one, basis is proportionally allocated
- Adjusted basis of property transferred, minus money and FMV of “other” property received, plus gain recognized in exchange or minus any loss
- Begins on p 9.1

Timber Applications

In Like-kind Exchanges

- RR 72-515 -- taxpayer conveyed to U.S. timberland with virgin and second growth for timberland with virgin timber
 - IRS ruled it was like-kind
- RR 76-253 -- taxpayer conveyed land to state, reserving timber, and received state-owned timberland of lesser value in return
 - IRS ruled it was like-kind
- See p 9.3

Timber Applications

(Continued I)

- RR 78-163 -- exchange of timberland for bare land ruled like-kind by IRS -- difference was in grade and quality, not their nature or character
- LR 96211012 -- IRS ruled that exchange of scenic conservation easement for fee interest in timberland qualifies as like-kind under Section 1031
- See p 9.3

Timber Applications

(Continued II)

- LR 8818034 -- forest products company exchanged tree farm in one state for timberland in other state as like-kind
- OR v. Comm. -- in exchange of land for timber rights only, Court ruled like-kind requirements were not met. Under Oregon law transfer of standing timber was a transfer of personal property, and thus not like-kind
- See p 9.4

Courts And Like-Kind

- Tax Courts generally defer to state law -- where standing timber is deemed an interest in realty, its exchange for bare land should qualify under IRC § 1031 as like-kind
- LR 9525002 -- exchange of land and timber for standing timber only subject to a cutting contract.
 - IRS ruled that nature or character of property was not like-kind
- See p 9.4

Smalley Case

- Fee interest in standing timber given by LO for \$517,000; purchaser given 2 years to enter and cut the timber; receipts held in escrow were exchanged for approximately 900 acres of reforested land
- Court reasoned case law supported IRS and LO arguments, but declined to rule on issues.
 - LO won on other technical grounds
 - But, Court left key issues unresolved
- See p 9.5