

1031 CORP.



**2016**

# 1031 Exchange Reporting Guide

*Helping to Simplify the Reporting of your 1031 Exchange*



800.828.1031  [www.1031CORP.com](http://www.1031CORP.com)



## **Introduction**

In our on-going commitment to provide our valued clients with the most comprehensive services possible, this information is designed to assist you and/or your tax preparer with the reporting requirements of your 1031 tax-deferred exchange. We will also provide guidance on when it may be necessary to file for an extension to ensure you have the benefit of the full 180-Day Exchange Period.

Please read the enclosed information carefully as filing your return before an exchange initiated in tax year 2016 is complete and included on your tax return *will* create a taxable event. There is no way to go back and amend a tax return to include a 1031 exchange.

We realize the form used to report your 1031 exchange is not the easiest form to complete so we have included line by line instructions to assist you. Additionally, we have developed a Microsoft Excel spreadsheet to help you with the preparation of IRS Form 8824 "Like-Kind Exchanges." If you would like a copy of this copyrighted spreadsheet, please provide us with your email address and we would be more than happy to forward the spreadsheet. You can also e-mail your request to [1031help@1031CORP.com](mailto:1031help@1031CORP.com).

*This information is designed to provide helpful information on the reporting of your 1031 tax-deferred exchange. It is provided with the understanding that 1031 CORP. is not engaged in rendering legal or accounting services. If legal or tax advice is required, the services of a competent professional should be sought.*

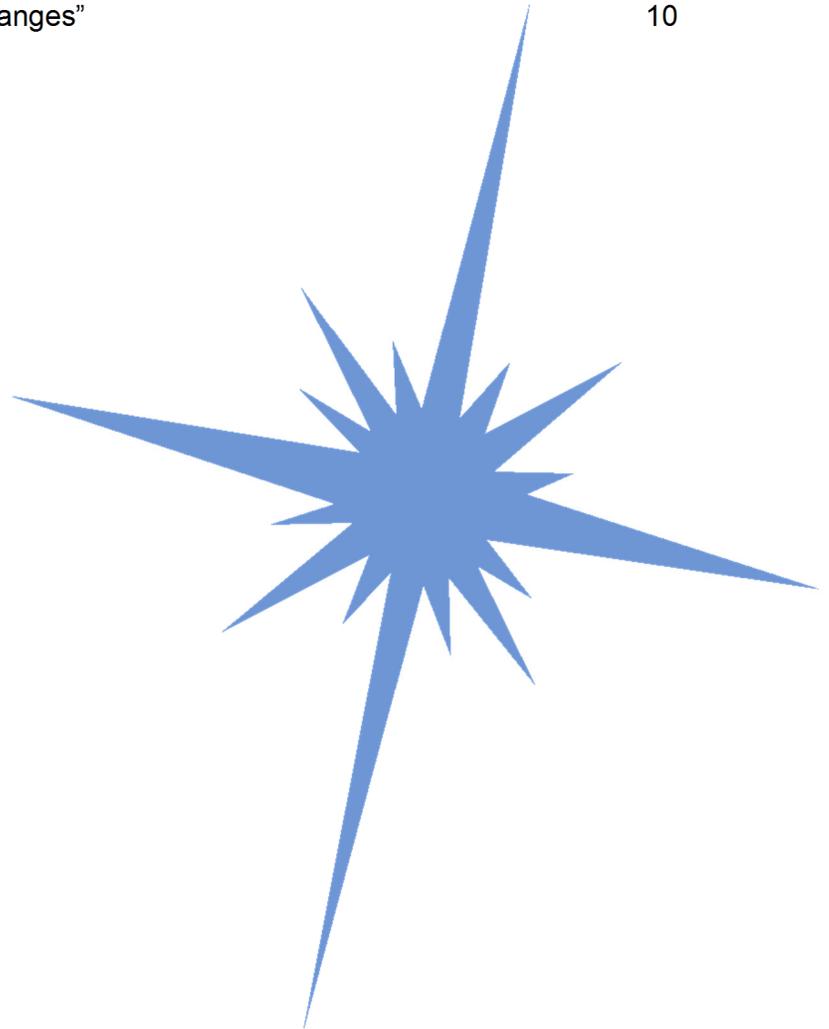
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## Reporting Interest on Exchange Proceeds

If your exchange proceeds were placed into an interest bearing exchange account with one of the several financial institutions utilized by 1031 CORP., you should receive a Form 1099-INT directly from the financial institution. The primary financial institutions used by 1031 CORP. in 2016 include Customers Bank, Republic Bank, Signature Bank and Umpqua Bank.

Note that if your exchange was initiated in one calendar year and completed in the following year, you will have two separate Form 1099-INT statements; one for each calendar year with each form reporting the respective interest earnings.

Regardless of whether you reinvested the interest earnings into your replacement property or received them directly after the completion of your exchange, the interest reported on the Form 1099-INT should be reported just as any other interest earnings for the tax year.

If you do not receive your Form 1099-INT by the second week of February, please contact your Exchange Officer and a duplicate copy will be requested from the financial institution.

## When to Report an Exchange

A 1031 exchange must be reported for the tax year in which the exchange was initiated through the sale of your first relinquished property regardless of when your replacement property was acquired. You must NOT file your tax return until your exchange is complete. Depending on the end of your fiscal year and whether or not you still wish to acquire replacement property, you may be required to file an extension of time in order to have the benefit of the full 180-Day Exchange period.

### **For individual taxpayers with an April reporting deadline:**

- If the exchange was *initiated and completed in 2016*, you can file your return and report the exchange immediately.
- If your exchange was *initiated in 2016 and you have not yet acquired all desired replacement property*, you must wait until you acquire all desired replacement property before you can file your return.
  - If your 180<sup>th</sup> day is before the April filing deadline, you can file your return as soon as all desired identified replacement property is acquired.
  - If your 180<sup>th</sup> day is after the April filing deadline and you will not have acquired all desired replacement property, you will need to file for a reporting extension in order to get the full benefit of the 180-Day Exchange Period.

***Filing your return before your exchange is complete WILL automatically end your 180-Day Exchange Period.*** This extension of time will give you the full 180-Day Exchange Period to complete your exchange as well as a six month extension to file your return. *Unfortunately, if you file your return you automatically end your exchange period. There is no way to amend your return or continue the exchange and you will have to report the sale as a taxable event.* A filing extension can be requested on Form 4868 and estimated taxes are still due.

## **Presidentially Declared Disaster Extensions**

If you were in the unfortunate situation of being affected by a Presidentially declared disaster that provided extensions to your 45-Day Identification Period and 180-Day Exchange Period deadlines allowed under Revenue Procedure 2005-27, you must note that on your return(s). Extensions are not automatic and they do not apply to all state or local states of emergency or all federal disasters.

Taxpayers qualifying for an extension are defined as follows: (a) An “affected taxpayer” as defined in IRC section 301.7508A-1(d)(1) of the Procedure and Administration Regulations; OR (b) Has difficulty meeting the 45-day identification or 180-day exchange deadlines for the following or similar reasons:

- (i) The relinquished property or the replacement property is located in a covered disaster area.;
- (ii) The principal place of business of any party to the transaction (for example, a qualified intermediary, exchange accommodation titleholder, transferee, settlement attorney, lender, financial institution, or a title insurance company) is located in the covered disaster area;
- (iii) Any party to the transaction (or an employee of such a party who is involved in the 1031 exchange transaction) is killed, injured or missing as a result of the Presidentially declared disaster;
- (iv) A document prepared in connection with the exchange (for example, the agreement between the transferor and the qualified intermediary or the deed to the relinquished property or replacement property) or a relevant land record is destroyed, damaged, or lost as a result of the Presidentially declared disaster;
- (v) A lender decides not to fund either permanently or temporarily a real estate closing due to the Presidentially declared disaster or refuses to fund a loan to the taxpayer because flood, disaster, or other hazard insurance is not available due to the Presidentially declared disaster; or
- (vi) A title insurance company is not able to provide the required title insurance policy necessary to settle or close a real estate transaction due to the Presidentially declared disaster.

For more information on reporting an exchange that included an extension allowed under Revenue Procedure 2005-27, please contact your Exchange Officer for a copy of the Revenue Procedure.

## **Incomplete or Partial Exchange Spanning Two Tax Years**

An exchange started near the end of a tax year will often run into the following tax year. The regulations address how to handle incomplete exchanges and cash “boot” received by the taxpayer in the following year.

If you structured your exchange with a “bona fide intent” to complete the exchange, you may elect to report the exchange as an installment sale in the tax year in which the first relinquished property was sold. Under the installment sale reporting rules, the receipt of an indebtedness that is secured directly or indirectly by cash or a cash equivalent is treated as receipt of payment. The

regulations provide that exchange proceeds held by a qualified intermediary, such as 1031 CORP., could fall into that category and as long as there is a bona fide intent to exchange, the taxpayer can report cash not reinvested in replacement property as an installment sale. [Reg. 1.1031(k)-1(j)(2); Temp Reg. 15a.453-1(b)(3)(i)]

A taxpayer has “bona fide intent” if it is reasonable to believe, based on all of the facts and circumstances at the beginning of the exchange period, that identified replacement property would be acquired to complete the exchange.

Any cash “boot” received in the following tax year can be reported using the installment sale method. Cash “boot” is any cash not reinvested in replacement property and paid directly to you from 1031 CORP. This would apply when replacement property is acquired but not all of the exchange proceeds are used or when no replacement property is acquired.

Reporting the cash “boot” using the installment sale method would allow you to defer the gain until the following tax year when you actually receive the exchange proceeds from your exchange account.

The regulations do not address how to handle liability relief (the sale proceeds of your relinquished property used to pay off debt against the old property) and whether the gain is due in the year of the sale or in the following tax year provided you had the bona fide intent to complete the exchange. Revenue Ruling 2003-56 related to a partnership whose exchange straddled two tax years and holds that if the exchange straddles two taxable years of the partnership, the amount of the relinquished liability that exceeds the amount of the replacement liability is treated as money or other property received in the first taxable year of the partnership, since the excess is attributable to the transfer of the relinquished property. This reasoning may also apply to other taxpayers.

You should discuss the tax consequences of your particular situation with your tax advisor to determine the best course of action in your particular situation.

## **Depreciation of Replacement Property**

The basis of the replacement property acquired in a 1031 exchange is generally the same as that of the relinquished property less any cash received plus any gain recognized provided an improved property is exchange for another improved property. Notice 2000-4 clarified how Modified Accelerated Cost Recovery System (MACRS) replacement property should be depreciated. The MACRS replacement property should be treated in the same manner as the MACRS relinquished property with respect to so much of your basis in the replacement property as does not exceed your adjusted basis in the relinquished property. The replacement property is depreciated over the remaining recovery period of, and using the same depreciation method and convention as that of the relinquished property. Any excess basis in the replacement property is treated as newly acquired MACRS property. There will generally be at least two different depreciation schedules in place on one asset. Notice 2000-4 applies to properties placed into service on or after January 3, 2000. T.D. 9115 now gives you the option to elect out of this depreciation treatment.

Note when depreciable property is sold and non-depreciable property, such as land, is acquired you may be unable to defer the depreciation and will be required the recapture the depreciation.

## Reporting State Capital Gain/ Income Tax

All states, except Pennsylvania, that have an income tax regime either follow the Federal tax code or have adopted their own version of section 1031.

### ***Pennsylvania Income Tax:***

Pennsylvania law does not contain a provision similar to IRC §1031, therefore property exchanges resulting in gain or income are generally subject to Pennsylvania tax except for c-corporations which follow the federal tax code. However, the Department of Revenue has determined that gain or loss on like-kind exchanges does not have to be recognized at the time of the exchange if the taxpayer's method of accounting allows deferral of gain. A taxpayer must use the method of accounting that allows the deferral of gain on a consistent basis, and the method must clearly reflect the taxpayer's income. In addition, a taxpayer may not change his or her method of accounting just to obtain a tax benefit for a particular transaction, and the deferral of gain or income with respect to like-kind exchanges will remain the exception rather than the rule. [Pennsylvania Personal Income Tax Bulletin No. 2006-07, 10/20/2006.]

### ***Non-Resident Withholding Tax:***

If the state in which you sold relinquished property has a non-resident withholding tax and you requested an exemption, you will need to file a state return to report your exchange.

Please consult your tax advisor for information on how to report the transaction to the appropriate state(s).

## Completion of Form 8824 “Like-Kind Exchanges”

A 1031 exchange is reported on Form 8824 “Like-Kind Exchanges.” This form cannot be completed until all replacement property is acquired and the exchange is complete. The following are step by step instructions to assist you with the completion of this form.

We would be more than happy to forward a very helpful Microsoft Excel formula created by 1031 CORP. to aid in your preparation of Form 8824. Simply contact your Exchange Officer and provide your email address and it will be forwarded to you and/or your tax preparer.

### **Part I:**

- Line 1** Describe the relinquished (old) property(ies) (e.g. Steel mill, duplex, raw land) and indicate that the property is located in the USA.
- Line 2** Describe the replacement (new) property(ies) (e.g. Steel mill, duplex, raw land) and indicate that the property is located in the USA.
- Line 3** Use initial acquisition date of the relinquished property regardless of the date of any improvements made subsequent to initial purchase.
- Line 4** Use date of sale of the first property relinquished.
- Line 5** This is the 45<sup>th</sup> day or earlier. Note that the taxpayer and the tax return preparer should have support for this date in the form of “written notice.” “Written notice”

requires that the taxpayer must designate the replacement property in writing, as the replacement property in a like kind exchange, in a written document signed by the taxpayer within 45 days of the beginning of the 180-day exchange period and sent to a party to the transaction that is not a disqualified person (typically 1031 CORP.). The letter must describe the property. For real property, a legal description, street address or property name are required.

**Line 6** This is the 180<sup>th</sup> day or the due date of the return or the completion of the exchange (if earlier). Note the taxpayer must file for an extension if the taxpayer is within the 180-Day Exchange Period at the time of the due date of the return.

**Line 7** Note that if the exchange is a related party exchange (involves the transfer to or from a related party within the exchange) question is indicated as “yes”, Form 8824 must be filed for two additional years after the exchange.

## **Part II:**

**Line 8** Do your homework and make sure you understand the related party issues including the rules of attribution. If 7 is answered “yes”, this section must be completed in full.

**Line 9** The property sold to a related party should not be sold by that party for 730 days or two years following the related party’s acquisition of the property. (Note that signing an Agreement of Sale will toll (or end) the taxpayer’s holding period and create a taxable event.)

**Line 10** What is purchased from a related party should not be sold (by the taxpayer) for 730 days or two years following the completion of the exchange.

**Line 11** If either 9 or 10 have been checked yes, then this Line 11 must be completed. Arguably, blocks a and b do not give rise to potential abuse. Proof that involuntary conversion was not a threat at the time of the exchange might be difficult to prove. The facts and circumstances test of box c are going to be difficult to win upon audit. The case must be compellingly in favor of the taxpayer.

## **Part III:**

**Lines 12 to 14** are only applicable if other than like kind property is involved in the sale of the relinquished property(s). The gain or loss on the disposition of *non*-like kind assets is transferred to the appropriate form (usually Schedule D or Form 4797). For example, if a furnished rental property was sold and an unfurnished rental property was purchased as the replacement property this would give rise to reporting on Lines 12 through 14.

**Line 15** This is one of, if not the most complicated, lines of the form. This is comprised of the following four elements:

- a. Cash that the taxpayer walked away with from the transaction.  
(plus)

- b. The Fair Market Value of any non like-kind property received in the exchange  
(plus)
- c. Any net reduction in debt (new debt less than old debt). If the taxpayer added additional equity in the course of completing the exchange, this additional equity reduces the net reduction in debt.  
(less)
- d. Exchange fees and other transaction costs – use all such costs to reduce Line 15 first and then use the remainder on Line 18.

**Line 16** This is the contract (sale) price of the replacement property. Do not reduce this by any transaction costs.

**Line 17** This is the sum of Lines 15 and 16.

**Line 18** This is the second most confusing line of the form (behind Line 15). This line is comprised of the following three elements:

- a. Adjusted tax basis of the relinquished property.  
(plus)
- b. Net amount of additional equity added to complete the exchange (not otherwise used to offset potential debt boot on Line 15).  
(plus)
- c. Exchange fees and other transaction costs (not otherwise used on Line 15).

**Line 19** This is Line 18 less Line 17. This is the economic or realized gain and should make some intuitive sense to you. In essence, this is the gain that would be taxed if not for the election under Section 1031.

**Line 20** The goal is to minimize the amount on this line. To the extent that you can, minimize the amount on Line 15 below the realized gain, less than the full gain will be taxed as a result of the election under Section 1031.

**Line 21** The instructions are very confusing with respect to Section 1250 property. A literal interpretation of the instructions for Section 1250 property for recapture can result in recapture greater than the amount of accumulated depreciation. Now that there is effectively no 19 year real property that remains with depreciable life, this line should not come into play for 1031 exchanges involving real estate. Otherwise, any gain on Line 20 is allocated 100% up to the amount of recapture that would be calculated in a sale at gain for which Section 1031 was not elected.

**Line 22** To the extent that there is an excess of Line 20 over Line 21, this excess is reported on Line 22. This amount is carried over to the appropriate form (typically Schedule D or Form 4797). If an installment sale election were to be made, this gain would be transferred to Form 6252.

**Line 23** This is the sum of Lines 21 and 22. It cannot exceed Line 20 and must also not exceed Line 19.

**Line 24** This is the difference between Line 19 and Line 23. The goal is to have Line 24 equal Line 19. To the extent that there is any amount on Line 24, there will be deferral of recognized gain. Note that the form refers the taxpayer to the instructions if a related party is involved in the exchange. If this is the case, and subsequent sale occurs within the prohibited two-year period, the gain is reported in the year of that subsequent sale.

**Line 25** This is the sum of Lines 18 and 23 after subtracting Line 15. In essence, this is the old basis plus capitalized transaction costs plus additional capital (equity or purchase money debt) less any gain recognized or boot.

**Like-Kind Exchanges**  
(and section 1043 conflict-of-interest sales)

▶ Attach to your tax return.

▶ Information about Form 8824 and its separate instructions is at [www.irs.gov/form8824](http://www.irs.gov/form8824).

Identifying number

**Part I Information on the Like-Kind Exchange**

**Note:** If the property described on line 1 or line 2 is real or personal property located outside the United States, indicate the country.

**1** Description of like-kind property given up:  
-----

**2** Description of like-kind property received:  
-----

**3** Date like-kind property given up was originally acquired (month, day, year) . . . . . **3** MM/DD/YYYY

**4** Date you actually transferred your property to other party (month, day, year) . . . . . **4** MM/DD/YYYY

**5** Date like-kind property you received was identified by written notice to another party (month, day, year). See instructions for 45-day written identification requirement . . . . . **5** MM/DD/YYYY

**6** Date you actually received the like-kind property from other party (month, day, year). See instructions **6** MM/DD/YYYY

**7** Was the exchange of the property given up or received made with a related party, either directly or indirectly (such as through an intermediary)? See instructions. If "Yes," complete Part II. If "No," go to Part III . . . .  Yes  No

**Note:** Do not file this form if a related party sold property into the exchange, directly or indirectly (such as through an intermediary); that property became your replacement property; and none of the exceptions in line 11 applies to the exchange. Instead, report the disposition of the property as if the exchange had been a sale. If one of the exceptions on line 11 applies to the exchange, complete Part II.

**Part II Related Party Exchange Information**

**8** Name of related party Relationship to you Related party's identifying number

Address (no., street, and apt., room, or suite no., city or town, state, and ZIP code)

**9** During this tax year (and before the date that is 2 years after the last transfer of property that was part of the exchange), did the related party sell or dispose of any part of the like-kind property received from you (or an intermediary) in the exchange? . . . . .  Yes  No

**10** During this tax year (and before the date that is 2 years after the last transfer of property that was part of the exchange), did you sell or dispose of any part of the like-kind property you received? . . . . .  Yes  No

If both lines 9 and 10 are "No" and this is the year of the exchange, go to Part III. If both lines 9 and 10 are "No" and this is **not** the year of the exchange, stop here. If either line 9 or line 10 is "Yes," complete Part III and report on this year's tax return the deferred gain or (loss) from line 24 **unless** one of the exceptions on line 11 applies.

**11** If one of the exceptions below applies to the disposition, check the applicable box.

- a**  The disposition was after the death of either of the related parties.
- b**  The disposition was an involuntary conversion, and the threat of conversion occurred after the exchange.
- c**  You can establish to the satisfaction of the IRS that neither the exchange nor the disposition had tax avoidance as one of its principal purposes. If this box is checked, attach an explanation. See instructions.

Name(s) shown on tax return. Do not enter name and social security number if shown on other side.

Your social security number

**Part III Realized Gain or (Loss), Recognized Gain, and Basis of Like-Kind Property Received**

**Caution:** If you transferred **and** received (a) more than one group of like-kind properties or (b) cash or other (not like-kind) property, see **Reporting of multi-asset exchanges** in the instructions.

**Note:** Complete lines 12 through 14 **only** if you gave up property that was not like-kind. Otherwise, go to line 15.

12	Fair market value (FMV) of other property given up . . . . .	12			
13	Adjusted basis of other property given up . . . . .	13			
14	Gain or (loss) recognized on other property given up. Subtract line 13 from line 12. Report the gain or (loss) in the same manner as if the exchange had been a sale . . . . .	14			
<b>Caution:</b> If the property given up was used previously or partly as a home, see <b>Property used as home</b> in the instructions.					
15	Cash received, FMV of other property received, plus net liabilities assumed by other party, reduced (but not below zero) by any exchange expenses you incurred. See instructions . . . . .	15			
16	FMV of like-kind property you received . . . . .	16			
17	Add lines 15 and 16 . . . . .	17			
18	Adjusted basis of like-kind property you gave up, net amounts paid to other party, plus any exchange expenses <b>not</b> used on line 15. See instructions . . . . .	18			
19	<b>Realized gain or (loss).</b> Subtract line 18 from line 17 . . . . .	19			
20	Enter the smaller of line 15 or line 19, but not less than zero . . . . .	20			
21	Ordinary income under recapture rules. Enter here and on Form 4797, line 16. See instructions . . . . .	21			
22	Subtract line 21 from line 20. If zero or less, enter -0-. If more than zero, enter here and on Schedule D or Form 4797, unless the installment method applies. See instructions . . . . .	22			
23	<b>Recognized gain.</b> Add lines 21 and 22 . . . . .	23			
24	Deferred gain or (loss). Subtract line 23 from line 19. If a related party exchange, see instructions . . . . .	24			
25	<b>Basis of like-kind property received.</b> Subtract line 15 from the sum of lines 18 and 23 . . . . .	25			

**Part IV Deferral of Gain From Section 1043 Conflict-of-Interest Sales**

**Note:** This part is to be used **only** by officers or employees of the executive branch of the Federal Government or judicial officers of the Federal Government (including certain spouses, minor or dependent children, and trustees as described in section 1043) for reporting nonrecognition of gain under section 1043 on the sale of property to comply with the conflict-of-interest requirements. This part can be used **only** if the cost of the replacement property is more than the basis of the divested property.

26	Enter the number from the upper right corner of your certificate of divestiture. ( <b>Do not</b> attach a copy of your certificate. Keep the certificate with your records.) . . . . .				
27	Description of divested property ▶ _____				
28	Description of replacement property ▶ _____				
29	Date divested property was sold (month, day, year) . . . . .	29			MM/DD/YYYY
30	Sales price of divested property. See instructions . . . . .	30			
31	Basis of divested property . . . . .	31			
32	<b>Realized gain.</b> Subtract line 31 from line 30 . . . . .	32			
33	Cost of replacement property purchased within 60 days after date of sale . . . . .	33			
34	Subtract line 33 from line 30. If zero or less, enter -0- . . . . .	34			
35	Ordinary income under recapture rules. Enter here and on Form 4797, line 10. See instructions . . . . .	35			
36	Subtract line 35 from line 34. If zero or less, enter -0-. If more than zero, enter here and on Schedule D or Form 4797. See instructions . . . . .	36			
37	<b>Deferred gain.</b> Subtract the sum of lines 35 and 36 from line 32 . . . . .	37			
38	<b>Basis of replacement property.</b> Subtract line 37 from line 33 . . . . .	38			



# Instructions for Form 8824

## Like-Kind Exchanges (and section 1043 conflict-of-interest sales)

Section references are to the Internal Revenue Code unless otherwise noted.

### General Instructions

**Future developments.** For the latest information about developments related to Form 8824 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/form8824](http://www.irs.gov/form8824).

### Purpose of Form

Use Parts I, II, and III of Form 8824 to report each exchange of business or investment property for property of a like kind. Form 8824 figures the amount of gain deferred as a result of a like-kind exchange. Part III computes the amount of gain required to be reported on the tax return in the current year if cash or property that isn't like kind is involved in the exchange. Also, the basis of the like-kind property received is figured on Form 8824.

Certain members of the executive branch of the Federal Government and judicial officers of the Federal Government use Part IV to elect to defer gain on conflict-of-interest sales. Judicial officers of the Federal Government are the following:

1. Chief Justice of the United States.
2. Associate Justices of the Supreme Court.
3. Judges of the:
  - a. United States courts of appeals,
  - b. United States district courts, including the district courts in Guam, the Northern Mariana Islands, and the Virgin Islands,
  - c. Court of Appeals for the Federal Circuit,
  - d. Court of International Trade,
  - e. Tax Court,
  - f. Court of Federal Claims,
  - g. Court of Appeals for Veterans Claims,
  - h. United States Court of Appeals for the Armed Forces, and
  - i. Any court created by Act of Congress, the judges of which are entitled to hold office during good behavior.

**Multiple exchanges.** If you made more than one like-kind exchange, you can file a summary on one Form 8824 and attach

your own statement showing all the information requested on Form 8824 for each exchange. Include your name and identifying number at the top of each page of the statement. On the summary Form 8824, enter only your name and identifying number, "Summary" on line 1, the total recognized gain from all exchanges on line 23, and the total basis of all like-kind property received on line 25.

### When To File

If during the current tax year you transferred property to another party in a like-kind exchange, you must file Form 8824 with your tax return for that year. Also file Form 8824 for the 2 years following the year of a related party exchange. See the instructions for [Line 7](#), later, for details.

### Like-Kind Exchanges

Generally, if you exchange business or investment property solely for business or investment property of a like kind, section 1031 provides that no gain or loss is recognized. If, as part of the exchange, you also receive other (not like-kind) property or money, gain is recognized to the extent of the other property and money received, but a loss isn't recognized.

Section 1031 doesn't apply to exchanges of inventory, stocks, bonds, notes, other securities or evidence of indebtedness, interests in a partnership, certificates of trust or beneficial interests, or certain other assets. See section 1031(a)(2). In addition, section 1031 doesn't apply to certain exchanges involving tax-exempt use property subject to a lease. See section 470(e)(4).



**TIP** *If you exchanged stock in a mutual ditch, reservoir, or irrigation company, see the discussion later.*

**Like-kind property.** Properties are of like kind if they are of the same nature or character, even if they differ in grade or quality. Personal properties of a like class are like-kind properties.

Property that is exchanged for a different type of property or class of property won't qualify as like-kind property. Livestock of different sexes are not like-kind properties. Also, personal property used predominantly in the United States and personal property used

predominantly outside the United States are not like-kind properties. See Pub. 544, Sales and Other Dispositions of Assets, for more details.

Real properties generally are of like kind, regardless of whether they are improved or unimproved. However, real property in the United States and real property outside the United States aren't like-kind properties.

**Deferred exchanges.** A deferred exchange occurs when the property received in the exchange is received after the transfer of the property given up. For a deferred exchange to qualify as like kind, you must comply with the timing requirements for identification and receipt of replacement property. The replacement property for the exchange must be identified within 45 days after the property being given up is transferred. The replacement property must be received within 180 days, or by the due date of the tax return including extensions, whichever is earlier. See the instructions for [Line 5](#) and [Line 6](#), later, for more details.

If you make a deferred exchange using a qualified intermediary (QI), the transfer of the property given up and receipt of like-kind property is treated as a like-kind exchange. If you fail to meet the timing requirements because of the QI, your transaction won't qualify as a deferred exchange and any gain may be taxable in the year you transferred the property. However, if the QI defaults on its obligation to acquire and transfer replacement property because of bankruptcy or receivership proceedings and you meet certain requirements, you may be able to report the gain in the year or years payments are received. For the requirements, see Rev. Proc. 2010-14, 2010-12 I.R.B. 456, available at [www.irs.gov/irb/2010-12\\_IRB/ar07.html](http://www.irs.gov/irb/2010-12_IRB/ar07.html).

**Multi-asset exchanges.** A multi-asset exchange involves the transfer and receipt of more than one group of like-kind properties. For example, an exchange of land, vehicles, and cash for land and vehicles is a multi-asset exchange. An exchange of land, vehicles, and cash for land only isn't a multi-asset exchange. The transfer or receipt of multiple properties within one like-kind group is also a multi-asset exchange. Special rules apply when figuring the amount of gain recognized and your basis in properties

received in a multi-asset exchange. For details, see Regulations section 1.1031(j)-1.

#### **Reporting of multi-asset exchanges.**

If you transferred and received (a) more than one group of like-kind properties or (b) cash or other (not like-kind) property, don't complete lines 12 through 18 of Form 8824. Instead, attach your own statement showing how you figured the realized and recognized gain, and enter the correct amount on lines 19 through 25. Report any recognized gains on your Schedule D; Form 4797, Sales of Business Property; or Form 6252, Installment Sale Income, whichever applies.

#### **Exchanges using a qualified exchange accommodation arrangement (QEAA).**

If property is transferred to an exchange accommodation titleholder (EAT) and held in a QEAA, the EAT may be treated as the beneficial owner of the property, the property transferred from the EAT to you may be treated as property you received in an exchange, and the property you transferred to the EAT may be treated as property you gave up in an exchange. This may be true even if the property you are to receive is transferred to the EAT before you transfer the property you are giving up. However, the property transferred to you can't be treated as property received in an exchange if you previously owned it within 180 days of its transfer to the EAT. For details, see Rev. Proc. 2000-37 as modified by Rev. Proc. 2004-51. Rev. Proc. 2000-37 is on page 308 of Internal Revenue Bulletin 2000-40 at [www.irs.gov/pub/irs-irbs/irb00-40.pdf](http://www.irs.gov/pub/irs-irbs/irb00-40.pdf). Rev. Proc. 2004-51, 2004-33 I.R.B. 294, is available at [www.irs.gov/irb/2004-33\\_IRB/ar13.html](http://www.irs.gov/irb/2004-33_IRB/ar13.html).

**Property used as home.** If the property given up was owned and used as your home for at least a total of two years during the 5-year period ending on the date of the exchange, you may be able to exclude part or all of any gain figured on Form 8824. For details on the exclusion (including how to figure the amount of the exclusion), see Pub. 523, Selling Your Home. Fill out Form 8824 according to its instructions, with these exceptions:

1. Subtract line 18 from line 17. Enter that result on line 19. On the dotted line next to line 19, enter "Section 121 exclusion" and the amount of the exclusion.

2. On line 20, enter the smaller of:
- Line 15 minus the exclusion, or
  - Line 19.

Don't enter less than zero.

3. Subtract line 15 from the sum of lines 18 and 23. Add the amount of your

exclusion to the result. Enter that sum on line 25.

**Property used partly as home.** If the property given up was used partly as a home, and partly for business or investment, you will need to use two separate Forms 8824 as worksheets. Use one worksheet for the part of the property used as a home, and the other worksheet for the part used for business or investment. Fill out only lines 15 through 25 of each worksheet Form 8824. On the worksheet Form 8824 for the part of the property used as a home, follow steps (1) through (3) above, except that instead of following step (2), enter the amount from line 19 on line 20. On the worksheet Form 8824 for the part of the property used for business or investment, follow steps (1) through (3) above only if you can exclude at least part of any gain from the exchange of that part of the property; otherwise, complete the form according to its instructions. Enter the combined amounts from lines 15 through 25 of both worksheet Forms 8824 on the Form 8824 you file. Don't file either worksheet with Form 8824.

**More information.** For details, see Rev. Proc. 2005-14, 2005-7 I.R.B. 528, available at [www.irs.gov/irb/2005-7\\_IRB/ar10.html](http://www.irs.gov/irb/2005-7_IRB/ar10.html).

**Exchange of stock in a mutual ditch, reservoir, or irrigation company.** The exchange of stock in a mutual ditch, reservoir, or irrigation company may qualify for the nonrecognition of gain or loss under section 1031.

The nonrecognition of gain or loss on the exchange may apply if, at the time of the exchange:

- The company is a section 501(c)(12)(A) organization (determined without regard to the percentage of income collected from members for the purpose of meeting losses and expenses), and
- The shares of stock in the company have been recognized by the highest court in the state in which the company was organized or by an applicable statute of that state as constituting or representing real property or an interest in real property.

**Additional information.** For more information on like-kind exchanges, see section 1031 and its regulations and Pub. 544.

## **Specific Instructions**

**Lines 1 and 2.** For real property, enter the address and type of property. For personal property, enter a short description. For property located outside the United States, include the country.

**Line 5.** Enter on line 5 the date of the written identification of the like-kind property you received in a deferred exchange. To comply with the **45-day written identification requirement**, the following conditions must be met.

1. The like-kind property you receive in a deferred exchange is designated in writing as replacement property either in a document you signed or in a written agreement signed by all parties to the exchange.

2. The document or agreement describes the replacement property in a clear and recognizable manner. Real property should be described using a legal description, street address, or distinguishable name (for example, "Mayfair Apartment Building").

3. No later than 45 days after the date you transferred the property you gave up:

a. You send, fax, or hand deliver the document you signed to the person required to transfer the replacement property to you (including a disqualified person) or to another person involved in the exchange (other than a disqualified person), or

b. All parties to the exchange sign the written agreement designating the replacement property.

Generally, a disqualified person is either your agent at the time of the transaction or a person related to you. For more details, see Regulations section 1.1031(k)-1(k).

**Note.** If you received the replacement property before the end of the 45-day period, you automatically are treated as having met the 45-day written identification requirement. In this case, enter on line 5 the date you received the replacement property.

**Line 6.** Enter on line 6 the date you received the like-kind property from the other party.

The property must be received by the earlier of the following dates.

- The 180th day after the date you transferred the property given up in the exchange.
- The due date (including extensions) of your tax return for the year in which you transferred the property given up.

**Line 7.** Special rules apply to like-kind exchanges made with related parties, either directly or indirectly. A related party includes your spouse, child, grandchild, parent, grandparent, brother, sister, or a related corporation, S corporation, partnership, trust, estate, or tax-exempt organization. See section 1031(f).

An exchange made indirectly with a related party includes:

- An exchange made with a related party through an intermediary (such as a qualified intermediary or an exchange accommodation titleholder, as defined in Pub. 544), or
- An exchange made by a disregarded entity (such as a single member limited liability company) if you or a related party owned that entity.

An exchange structured to avoid the related party rules isn't a like-kind exchange. Don't report it on Form 8824. Instead, you should report the disposition of the property given up as if the exchange had been a sale. See section 1031(f)(4). Such an exchange includes the transfer of property you gave up to a qualified intermediary in exchange for property you received that was formerly owned by a related party if the related party received cash or other (not like-kind) property for the property you received, and you used the qualified intermediary to avoid the application of the related party rules. See Rev. Rul. 2002-83 for more details. You can find Rev. Rul. 2002-83 on page 927 of Internal Revenue Bulletin 2002-49 at [www.irs.gov/pub/irs-irbs/irb02-49.pdf](http://www.irs.gov/pub/irs-irbs/irb02-49.pdf).



*If, after the exchange, you own replacement property that a related party sold into the exchange through an unrelated party such as a qualified intermediary, don't report the transaction on Form 8824 unless one of the exceptions on line 11 applies. Instead, report the disposition of the property given up as if the exchange had been a sale.*

If you or the related party (either directly or indirectly) dispose of property received in an exchange before the date that is 2 years after the last transfer which was part of the exchange, the deferred gain or (loss) from line 24 must be reported on your return for the year of disposition (unless an exception on line 11 applies).

If you are filing this form for 1 of the 2 years following the year of the exchange, complete Parts I and II. If both lines 9 and 10 are "No," **stop**. You don't have to complete Part III.

If either line 9 or line 10 is "Yes," and an exception on line 11 applies, check the applicable box on line 11, attach any required explanation, and **stop**. If none of the exceptions on line 11 apply, complete Part III. Report the deferred gain or (loss) from line 24 on this year's tax return as if the exchange had been a sale.

**Line 11c.** If you believe that you can establish to the satisfaction of the IRS that tax avoidance was not a principal purpose of both the exchange and the disposition, attach an explanation. Generally, tax avoidance won't be seen as a principal purpose in the case of:

- A disposition of property in a nonrecognition transaction,
- An exchange in which the related parties derive no tax advantage from the shifting of basis between the exchanged properties, or
- An exchange of undivided interests in different properties that results in each related party holding either the entire interest in a single property or a larger undivided interest in any of the properties.

**Lines 12, 13, and 14.** Line 12 should be completed if other property that doesn't qualify as like-kind property was part of the exchange, in addition to the like-kind property. Enter the fair market value (FMV) and the adjusted basis of the other property on lines 12 and 13, respectively. The gain or (loss) from this property is figured on line 14 and must be reported on your return. Report gain or (loss) as if the exchange were a sale.

**Line 15.** Include on line 15 the sum of:

- Any cash paid to you by the other party,
- The FMV of other (not like-kind) property you received, if any, and
- Net liabilities assumed by the other party—the excess, if any, of liabilities (including mortgages) assumed by the other party over the total of (a) any liabilities you assumed, (b) cash you paid to the other party, and (c) the FMV of the other (not like-kind) property you gave up.

See the example in the instructions for line 18.

Reduce the sum of the above amounts (but not below zero) by any exchange expenses you incurred.

The following rules apply in determining the amount of liability treated as assumed.

- A recourse liability (or portion thereof) is treated as assumed by the party receiving the property if that party has agreed to and is expected to satisfy the liability (or portion thereof). It doesn't matter whether the party transferring the property has been relieved of the liability.
- A nonrecourse liability generally is treated as assumed by the party receiving the property subject to the liability. However, if an owner of other assets subject to the same liability agrees with the party receiving the property to, and is expected to, satisfy part or all of the liability, the amount treated as assumed is reduced by the smaller of (a) the amount of the liability that the owner of the other assets has agreed to and is expected to satisfy or (b) the FMV of those other assets.

**Line 18.** Include on line 18 the sum of:

- The adjusted basis of the like-kind property you gave up,
- Exchange expenses, if any (except for expenses used to reduce the amount reported on line 15), and

- Net amount paid to the other party—the excess, if any, of the total of (a) any liabilities you assumed, (b) cash you paid to the other party, and (c) the FMV of the other (not like-kind) property you gave up over any liabilities assumed by the other party.

See Regulations section 1.1031(d)-2 and the following example for figuring amounts to enter on lines 15 and 18.

**Example.** A owns an apartment house with an FMV of \$220,000, an adjusted basis of \$100,000, and subject to a mortgage of \$80,000. B owns an apartment house with an FMV of \$250,000, an adjusted basis of \$175,000, and subject to a mortgage of \$150,000.

A transfers his apartment house to B and receives in exchange B's apartment house plus \$40,000 cash. A assumes the mortgage on the apartment house received from B, and B assumes the mortgage on the apartment house received from A.

A enters on line 15 only the \$40,000 cash received from B. The \$80,000 of liabilities assumed by B isn't included because it doesn't exceed the \$150,000 of liabilities A assumed. A enters \$170,000 on line 18—the \$100,000 adjusted basis, plus the \$70,000 excess of the liabilities A assumed over the liabilities assumed by B (\$150,000 - \$80,000).

B enters \$30,000 on line 15—the excess of the \$150,000 of liabilities assumed by A over the total (\$120,000) of the \$80,000 of liabilities B assumed and the \$40,000 cash B paid. B enters on line 18 only the adjusted basis of \$175,000 because the total of the \$80,000 of liabilities B assumed and the \$40,000 cash B paid doesn't exceed the \$150,000 of liabilities assumed by A.

**Line 21.** If you disposed of section 1245, 1250, 1252, 1254, or 1255 property (see the instructions for Part III of Form 4797), you may be required to recapture as ordinary income part or all of the realized gain (line 19). Figure the amount to enter on line 21 as follows:

**Section 1245 property.** Enter the smaller of:

1. The total adjustments for deductions (whether for the same or other property) allowed or allowable to you or any other person for depreciation or amortization (up to the amount of gain shown on line 19), or
2. The gain shown on line 20, if any, plus the FMV of non-section 1245 like-kind property received.

**Section 1250 property.** Enter the smaller of:

1. The gain you would have had to report as ordinary income because of

additional depreciation if you had sold the property (see the Form 4797 instructions for line 26), or

2. The larger of:
  - a. The gain shown on line 20, if any, or
  - b. The excess, if any, of the gain in item (1) above over the FMV of the section 1250 property received.

**Section 1252, 1254, and 1255 property.** The rules for these types of property are similar to those for section 1245 property. See Regulations sections 1.1252-2(d) and 1.1254-2(d) and Temporary Regulations section 16A.1255-2(c) for details. If the installment method applies to this exchange:

1. See section 453(f)(6) to determine the installment sale income taxable for this year and report it on Form 6252.
2. Enter on Form 6252, line 25 or 36, the section 1252, 1254, or 1255 recapture amount you figured on Form 8824, line 21. Don't enter more than the amount shown on Form 6252, line 24 or 35.
3. Also enter this amount on Form 4797, line 15.
4. If all the ordinary income isn't recaptured this year, report in future years on Form 6252 the ordinary income up to the taxable installment sale income, until it is all reported.

**Line 22.** Report a gain from the exchange of property used in a trade or business (and other noncapital assets) on Form 4797, line 5 or line 16. Report a gain from the exchange of capital assets according to the Schedule D instructions for your return. Be sure to use the date of the exchange as the date for reporting the gain. If the installment method applies to this exchange, see section 453(f)(6) to determine the installment sale income taxable for this year and report it on Form 6252.

**Line 24.** If line 19 is a loss, enter it on line 24. Otherwise, subtract the amount on line 23 from the amount on line 19 and enter the result. For exchanges with related parties, see the instructions for [Line 7](#), earlier.

**Line 25.** The amount on line 25 is your basis in the like-kind property you received in the exchange. Your basis in other property received in the exchange, if any, is its FMV.

## Section 1043 Conflict-of-Interest Sales (Part IV)

If you sell property at a gain according to a certificate of divestiture issued by the Office of Government Ethics (OGE) or the Judicial Conference of the United States (or its designee) and purchase replacement property (permitted property), you can elect to defer part or all of the realized gain. You must recognize gain on the sale only to the extent that the amount realized on the sale is more than the cost of replacement property purchased within 60 days after the sale. (You also must recognize any ordinary income recapture.) Permitted property is any obligation of the United States or any diversified investment fund approved by the OGE.

**TIP** *If the property you sold was stock you acquired by exercising a statutory stock option, you may be treated as meeting the holding periods that apply to such stock, regardless of how long you actually held the stock. This may benefit you if you don't defer your entire gain, because it may allow you to treat the gain as a capital gain instead of ordinary income. For details, see section 421(d) or Pub. 525, Taxable and Nontaxable Income.*

Complete Part IV of Form 8824 only if the cost of the replacement property is more than the basis of the divested property and you elect to defer the gain. Otherwise, report the sale on your Schedule D or Form 4797, whichever applies.

Your basis in the replacement property is reduced by the amount of the deferred gain. If you made more than one purchase of replacement property, reduce your basis in the replacement property in the order you acquired it.

**Line 30.** Enter the amount you received from the sale of the divested property, minus any selling expenses.

**Line 35.** Follow these steps to determine the amount to enter.

1. Use Part III of Form 4797 as a worksheet to figure ordinary income under the recapture rules.
2. Enter on Form 8824, line 35, the amount from Form 4797, line 31. Don't attach the Form 4797 used as a worksheet to your return.

3. Report the amount from line 35 on Form 4797, line 10, column (g). In column (a), write "From Form 8824, line 35." Don't complete columns (b) through (f).

**Line 36.** If you sold a capital asset, enter any capital gain from line 36 on your Schedule D. If you sold property used in a trade or business (or any other asset for which the gain is treated as ordinary income), report the gain on Form 4797, line 2 or line 10, column (g). In column (a), write "From Form 8824, line 36." Don't complete columns (b) through (f).

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You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for individual taxpayers filing this form is approved under OMB control number 1545-0074 and is included in the estimates shown in the instructions for their individual income tax return. The estimated burden for all other taxpayers who file this form is shown below.

<b>Recordkeeping</b> . . . . .	10 hr., 16 min.
<b>Learning about the law or the form</b> . . . . .	1 hr., 59 min.
<b>Preparing the form</b> . . . . .	2 hr., 14 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.

