§1031 Tax Deferred Exchange
&
The Delaware Statutory Trust (DST)

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§1031 TAX DEFERRED EXCHANGE

Like-Kind Property

Like-kind refers to the type of property being exchanged. You can exchange any investment real estate for any other type of investment real estate - for example, vacant land can be exchanged for rental property. In most cases your personal residence is not a like-kind investment property. In addition, you can often exchange one property into multiple properties. The three property rule allows for an exchange into three separate properties which can provide for diversification of your capital.


COMMERCIAL


RENTAL INCOME


LAND


MULTIFAMILY


GROCERY ANCHOR


RETAIL CENTER

Exchanging Up

To accomplish a fully tax-deferred exchange the rule of thumb is ... exchange even or up in value and exchange even or up in equity and in debt.

Boot

To the extent that you do not exchange even or up in value and/or exchange even or up in equity and debt, you will have received non qualifying property ("boot") in your exchange. If boot is received, tax is computed on the amount of gain on the sale or the amount of boot received - whichever is lower.

Typical Exchange Addendum Language for Sales Contracts

"Buyer hereby acknowledges that it is the intent of the Seller to effect an IRC §1031 tax deferred exchange which will not delay the closing or cause additional expenses to the Buyer. The Seller's rights under this agreement may be assigned to a Qualified Intermediary, named by Seller, for the purpose of completing such an exchange. Buyer agrees to cooperate with the Seller and the Qualified Intermediary in a manner necessary to complete the Exchange."

§1031 Do's and Don'ts

DO advanced planning for the exchange. Talk to your accountant, attorney, broker, financial planner, lender and Qualified Intermediary prior to exchanging and possibly investing in a DST.

DO NOT miss your identification and exchange deadlines. Failure to identify within the 45 day identification period or failure to acquire replacement property within the 180 day exchange period will disqualify the entire exchange resulting in the sale of the downleg property being fully taxable. Reputable Intermediaries will not act on back-dated or late identifications.

DO keep in mind these three basic rules to qualify for complete tax deferral:

- Receive only "like-kind" replacement property.
- Use all proceeds from the relinquished property for purchasing the replacement property.
- Make sure the debt on the replacement property is equal to or greater than the debt on the relinquished property. (Exception: A reduction in debt can be offset with additional cash; however, a reduction in equity cannot be offset by increasing debt).

DO NOT try doing a §1031 exchange using your attorney or CPA to hold title or funds. IRS regulation requires a Qualified Intermediary to properly complete an exchange. Call us for the name of one that operates in your area.

DO attempt to sell before you purchase. Occasionally exchangers find the ideal replacement property before a buyer is found for the relinquished property. If this situation occurs, a "reverse" exchange (buying before selling) may be necessary.

DO NOT dissolve partnerships or change the manner of holding title during the exchange. A change in the Exchanger's legal relationship with the property may jeopardize the exchange.

DELAWARE STATUTORY TRUST (DST)

What is a Delaware Statutory Trust?

A DST is a separate legal entity formed as a trust under Delaware law. If properly structured, the DST will be classified as a grantor trust for federal income tax purposes and, as a result, the purchaser of a beneficial interest in the trust will acquire an undivided interest in the asset(s) held by the DST. An investor can use a beneficial interest in a DST as replacement property in a 1031 tax deferred exchange.

A DST is structured so that each beneficiary (investor) owns a beneficial interest in the trust. The managing Trustee of the DST is either the Sponsor or an affiliate of the Sponsor.

The DST holds title to 100% of the interest in the property.

Tax reporting for a DST is done on a Schedule E utilizing property operating information provided by the Sponsor.

The IRS issued the Revenue Ruling 2004-86 that set forth parameters a DST must meet in order to be viewed as a grantor trust and qualify for a viable tax deferring vehicle. If the DST is structured responsibly, the parameters do not prohibit a successful business plan for a property. The following is a list of the parameters and the procedures generally accepted to comply with these limitations:

The DST may not purchase additional assets other than short-term obligations.

All cash from the property is held in liquid money market type accounts.

The DST may not accept additional contributions of assets.

There can be no additional capital calls to the DST. As part of the due diligence, the Sponsor conservatively anticipates the amount needed to properly maintain the property over the holding period and that amount is included in the initial capital raise.

The DST may not renegotiate the loan terms and/or the loan may not be refinanced.

The Sponsor has negotiated the loan terms for the property prior to acquiring the property. In the event the property is not sold before the loan matures, there are provisions in place to convert the DST to a limited liability company ("Springing LLC"). This allows the Trustee (Sponsor) the ability to take the necessary actions to remedy the situation if, for example, the property needed major capital improvements (not allowed within the DST structure) or the loan needed to be refinanced. This action will limit investors' ability to conduct another 1031 exchange upon the sale of the property.

The DST may not renegotiate leases or enter into new leases.

The investors, through the Trust Agreement, enter into a Master Lease with the Trustee in order to avoid having to renegotiate leases or enter into new leases with the actual tenants.

The DST may not make major structural changes.

Any major improvements will be done or have been done by the seller prior to the Sponsor purchasing the property. Normal "turn-over" expenses fall within the DST guidelines and do not create an issue with the DST structure.

Diversification does not insure a profit or guarantee against a loss.

The DST must distribute all cash, other than the necessary reserves, to the beneficiaries.

The DST may not sell or exchange property and reinvest the proceeds.

The DST structure does allow for the investors or beneficial owners to conduct their own 1031 tax deferred exchange once the DST has liquidated its assets (i.e. sold the property).

DELAWARE STATUTORY TRUST (DST)

The Benefits for Using a DST Include:

- The DST is the single owner and borrower; the lender only underwrites the DST, not each individual investor therefore the loan is nonrecourse to the investor. Investors purchasing a property on their own may have to arrange for financing and may be required to provide personal guarantees.
- The transfer of beneficial interests in a DST can be easier as there is generally less paperwork and time required than buying a property directly.
- A typical minimum investment of $100,000 allows more flexibility for investors to diversify their exchange into several properties compared to trying to purchase a property directly.
- The DST allows cash investors (non-1031) the option to complete a 1031 tax deferred exchange when the current property is sold.
- Investors are not required to sign on guarantees for non-recourse carve-outs on the loan that they might have with direct ownership.

Risks of an investment in a DST 1031 exchange include:

- Tax laws are subject to change which may have a negative impact on a DST investment.
- These investments are not suitable for all investors
- Lack of liquidity.

Potential Drawbacks of DST Ownership

A DST investment is an investment in real estate; any investment in real estate is subject to market value and rental income fluctuations, tenant issues, vacancies, taxes and governmental regulations. There are costs and fees associated with a DST investment and management and the tax benefits must be weighed against the investment costs.

A DST owner does not maintain management control or dictate day-to-day property management operations. DST ownership is also subject to additional IRS regulations that affect the management of the property and your ownership interest. Investors should investigate and thoroughly understand these issues prior to investing in a DST offering.

DST investments are highly speculative and involve substantial risks. No public market is likely to exist for such investments, so it should be understood that there is a lack of liquidity. DST investments are not freely transferable and substantial restrictions may apply to the transfer of interests.