



Tax News
for tax professionals



Like-kind exchange of TIC interest

We are seeing a trend in audit that is causing many tax adjustments, related to deferring gains on transactions under IRC Section 1031.

Tenancy-in-Common (TIC) interest is considered like-kind property for purposes of an IRC Section 1031 exchange. A partnership interest, however, is not treated as such under IRC Section 1031 (a)(2), to which California conforms. We are examining transactions involving exchanges of TIC interests due to findings of noncompliance in this area.

We have identified a number of cases where the property interest exchanged is more closely aligned with a partnership interest than a TIC. If a property interest is found, in substance, to be a partnership interest, then the property is not considered like-kind property, and deferring gain is not allowed.

Taxpayers are relying on Revenue Procedure 2002-22 (relating to rental real property) to support their position that they hold a TIC interest and are entitled to gain deferral. We will consider this revenue procedure, but will continue to make determinations based on existing law, and the facts and circumstances of each case. The essential question is whether the parties intended to, and did in fact join together for an undertaking or enterprise. Therefore, the substance of the transaction will ultimately determine the type of property interest involved.

Following are some of the factors considered in determining the type of property interest involved. No single factor is determinative:

- ☐ The agreement of the parties, and their conduct in executing its terms.
- ☐ The contributions, if any, that each party makes to the venture.
- ☐ Control over income and capital, and the right of each party to make withdrawals.
- ☐ Whether the parties are co-proprietors who share in net profits and have an obligation to share losses.
- ☐ Whether business was conducted in the joint names of the parties.
- ☐ Whether the parties held themselves out as joint ventures.
- ☐ Whether separate books of account were maintained for the venture.

We consider the conditions in Revenue Procedure 2002-22 as a minimum requirement for determining existence of a TIC interest in cases dealing with rental real property. At audit, we will request substantiation that those conditions are satisfied in order to make a thorough determination. Although we will look at private letter rulings for guidance, private letter rulings are binding only on the taxpayer to whom it was issued.



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