



EXETER

1031 Exchange Services LLC

Internal Revenue Service Revenue Ruling 1990-34

Revenue Ruling 1990-34, 1990-1 C.B. 154, 1990-16 I.R.B. 6.

DIRECT TRANSFERS OF LIKE-KIND PROPERTY

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Section 1031. - Exchange of Property Held for Productive Use or Investment, 26 CFR 1.1031(a)-1: Property held for productive use in trade or business or for investment.

Direct transfers of like-kind property. X's transfer of property of a like kind, qualifies as to X for nonrecognition of gain or loss on the exchange under section 1031 of the Code even though legal title to the property received by X is never held by Y.

ISSUE

If X transfers property to Y in exchange for property of a like kind, may the exchange as to X qualify for nonrecognition of gain or loss under section 1031 of the Internal Revenue Code even though legal title to the property received by X is never held by Y?

FACTS

X and Y are unrelated persons. X files its U.S. income tax return on a calendar year basis. On May 14, 1989, X and Y enter into a contract that requires X to transfer Black Acre to Y and Y to transfer to X property of a like kind with the same fair market value. Black Acre, unencumbered real property, has been held by X for productive use in its trade or business and has a fair market value of \$1,000,000. Under the contract, X is required to locate and identify property with a fair market value of \$1,000,000 that is of a like kind to Black Acre within 45 days of X's transfer of Black Acre to Y (the 'identification period'), and Y is required to purchase and transfer the identified property to X before the earlier of 180 days from the transfer of Black Acre or the due date (including extensions) for X's U.S. income tax return for the taxable year in which X's transfer of Black Acre to Y occurs (the 'exchange period'). If X fails to



EXETER

1031 Exchange Services LLC

identify the property to be received in the transaction before the end of the identification period or Y fails to purchase and transfer such property to X before the end of the exchange period, Y is required to pay \$1,000,000 to X. Neither X nor Y contracts to exchange Black Acre with any other party.

On May 23, 1989, X transfers Black Acre to Y. On June 1, 1989, X properly identifies Whiteacre as the property to be received. Whiteacre, owned by Z, a person unrelated to X, is unencumbered real property that has a fair market value of \$1,000,000 and is of a like kind to Black Acre. On July 10, 1989, Y purchases Whiteacre from Z, and at Y's direction, Z transfers legal title to Whiteacre directly to X before the end of the exchange period. X, thereafter holds Whiteacre for productive use in its trade or business.

LAW AND ANALYSIS

Under section 1031(a)(1) of the Code, no gain or loss is recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind that is to be held either for productive use in a trade or business or for investment.

Section 1031(a)(3) of the Code provides that any property received by a taxpayer will be treated as property which is not like-kind property if (A) such property is not identified as property to be received in the exchange on or before the day which is 45 days after the date on which the taxpayer transfers the property relinquished in the exchange or (B) such property is received after the earlier of (i) the day which is 180 days after the date on which the taxpayer transfers the property relinquished in the exchange, or (ii) the due date (including extensions) for the taxpayer's federal income tax return for the taxable year in which the transfer of the relinquished property occurs.

If Z had actually transferred legal title to Whiteacre to Y and Y had then transferred legal title to Whiteacre to X, the exchange of Whiteacre for Black Acre, as to X, would clearly qualify for nonrecognition of gain or loss under section 1031(a) of the Code. However, section 1031(a) does not require that Y hold legal title to Whiteacre, but merely that X receive solely property of a like kind to the property transferred in order for the exchange to qualify for nonrecognition of gain or loss. Therefore, the failure of Y to acquire legal title to Whiteacre does not disqualify X from nonrecognition of gain or loss under section 1031(a) on the transfer of Black Acre to Y in exchange for Whiteacre.

HOLDING



EXETER

1031 Exchange Services LLC

X's transfer of property to Y, in exchange for property of a like kind, qualifies as to X for nonrecognition of gain or loss on the exchange under section 1031 of the Code even though legal title to the property received by X is never held by Y.

DRAFTING INFORMATION

The principal author of this revenue ruling is D. Lindsay Russell of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Russell on (202) 343-2381 (not a toll-free call). Rev. Rul. 90-34, 1990-1 C.B. 154, 1990-16 I.R.B. 6.