

# Like-Kind Exchange Corner

*By Mary B. Foster*

## A Practical Guide to Code Sec. 1031 Identification Issues (Part I): Describing the Identified Property and the “Substantially the Same As Identified” Requirement



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Both deferred exchanges and reverse exchanges under Rev. Proc. 2000-37 have identification requirements that must be met within a 45-day period. The “identification period” begins to run in a deferred (also commonly called a “forward”) exchange when the relinquished property is transferred. The identification period begins to run in a reverse exchange under Rev. Proc. 2000-37 (also commonly called a “parking arrangement”) when the replacement property is acquired by the exchange accommodation titleholder (EAT).<sup>1</sup>

The identification requirement is often the most problematic aspect of a forward exchange if the taxpayer has not tied up the replacement property by the date of the relinquished property disposition. Forty-five days goes by quickly, and the taxpayer may be forced to make hasty choices for possible replacement properties. These choices cannot be undone once the identification period has expired.

The identification requirement in a parking arrangement is much easier for most taxpayers to meet because the pool of potential relinquished properties is usually quite limited. Nevertheless, difficult issues can arise when a taxpayer has multiple parking arrangements for the same relinquished property, or the potential relinquished properties are owned by different taxpayer entities.

This article first will discuss some of the basic identification mechanics. It will then examine trouble spots in the description of the identified property, as well as the requirement that the property received in a forward exchange or transferred in a parking arrangement be “substantially the same property as identified.” Future articles will discuss the alternative



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and multiple property identification rules, identifying property under construction or production, and the problems with identification with multiple entities, multiple exchanges, and combination reverse and forward exchanges.

## Identification Mechanics

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The regulations first provide some basic requirements for the identification.

### In Writing

The taxpayer must provide a written document in which the identified property must be designated as replacement property (or relinquished property in parking arrangement).<sup>2</sup> The identified property only needs to be identified in the written document and does not need to be under contract to be validly identified.

The written identification document must be signed by the taxpayer. If the relinquished property in the exchange is owned by a married couple, each spouse should sign the identification. Each spouse is a taxpayer and therefore should sign the identification even if the couple files a joint tax return or the relinquished property is community property.

Replacement property in a forward exchange can be identified in the exchange agreement, but is typically identified in a letter to the qualified intermediary ("QI"), sent near the end of the identification period. Relinquished property in a parking arrangement is typically identified in the qualified exchange accommodation agreement with the EAT. If the taxpayer has several potential relinquished properties, it is identified in a letter sent to the EAT near the end of the identification period.

It should be noted that the regulations allow the identification to be made to other parties to the exchange other than the QI or EAT, such as the seller of the replacement property, or the escrow agent or title company. However, when a QI or EAT is used, an identification would rarely be made to another party.<sup>3</sup> It could provide a fallback position if for some reason the identification made to the QI or EAT is too late. For example, suppose the identification to the QI in a forward exchange is late. However, the identification requirement still can be met if the taxpayer has entered into a purchase and sale agreement for the replacement property and the agreement states the replacement property will be acquired as part of an exchange.

### Sorry, No Extension

The written identification must be sent by midnight of the last day of the identification period. In a real estate transaction, it is typically scanned and emailed or faxed to the QI. Electronic identification is often used on program exchanges of vehicles and equipment. The written identification may also be hand delivered, mailed or otherwise sent.<sup>4</sup> The taxpayer should retain written evidence of the receipt of the identification by the QI or EAT because it will likely be required in an audit of the exchange.

Taxpayers frequently ask if there are any possible extensions to the identification period in a forward exchange. After all, the 45-day identification period is short and requires a taxpayer to make major decisions regarding replacement property choices, and a taxpayer often regrets those choices later. Unfortunately, the length of the identification period in a forward exchange is specified in Code Sec. 1031(a)(3)(A). It is not a safe harbor, and there are no extensions, other than for a federally declared disaster.<sup>5</sup> While the length of the identification period may seem arbitrary and unfair to many taxpayers, it is still a statutory deadline and must be complied with in order to have a valid deferred exchange. The cases in this area hold that the identification must be in writing, and simply visiting the property during the identification period is not enough.<sup>6</sup> Furthermore, a taxpayer should not backdate an identification letter to fake a valid identification, as this can lead to criminal tax fraud and penalties.<sup>7</sup>

The length of the identification period in a parking arrangement is not statutory, but it is a requirement of the safe harbor of Rev. Proc. 2000-37. It seems likely that the IRS would challenge a parking arrangement if the identification requirement was not timely met.

### Revocation

An identification may be revoked in writing at any time before the end of the identification period.<sup>8</sup> In practice, most identification letters are sent near the end of the identification period, so a revocation is not necessary. However, sometimes a taxpayer may contemplate making last-minute changes to an existing identification. In this situation, the taxpayer must avoid simply sending a new identification without stating that the prior identification is revoked. An ambiguity is created without a written revocation as to whether the taxpayer is identifying additional properties or substituting for the prior identification. Identification of additional properties might result in

falling outside of the three property or 200-percent rules for alternative identifications. To hopefully prevent this problem, a taxpayer who is contemplating a new identification in the last minutes of the identification period should be given a revocation form to provide along with the new identification form.

### **Acquisitions and Dispositions Within the Identification Period**

Often in a forward exchange, the taxpayer will acquire the first of multiple replacement properties prior to end of the identification period. Any replacement property received by the taxpayer before the end of the identification period will be treated as timely identified, and it does not need to be separately identified in a written document.<sup>9</sup> It will, however, count for the purposes of the three property and 200-percent rules, to be discussed in a future article.

The IRS applied this same principle in a parking arrangement and ruled that a relinquished property was properly identified when the relinquished property was disposed of though a QI during the identification period for the parking arrangement.<sup>10</sup> The taxpayer did make a separate written identification to the EAT of relinquished property, but it was not made until after expiration of the identification period for the parking arrangement. The IRS may have generously applied this principle to save an otherwise late identification, although it is unclear from the facts if the parked replacement property was identified in the exchange agreement with the QI. Nevertheless, it is advisable for a taxpayer in a parking arrangement to avoid this situation by separately identifying the relinquished property to the EAT within the identification period.

### **Real Property Descriptions**

Identified property must be unambiguously described in a written document. The regulations provide that real property is generally unambiguously described if by legal description, street address or distinguishable name.<sup>11</sup> Some real property, such as timberland, may not have a street address or an accurate legal description, and obtaining a survey during the identification period is not feasible. The regulations state that real

property is “generally” described by legal description or street address. Other methods of unambiguously describing the replacement property should be acceptable. Thus, timberland should be adequately identified by using a map with the property marked. Tax lot numbers could also be used if they unambiguously describe the real property. However, the regulations point out that “unimproved land located in Hood County with a fair market value not to exceed \$100,000” is not sufficient.<sup>12</sup>

Exchanges often involve real property interests of less than a fee interest. The regulations do not state if the real property described by “legal description, street address or distinguishable name” is a fee interest. To avoid ambiguity, or an issue with the substantially the same as identified requirement discussed below, the

identification should state if the real property is less than a fee interest, such as an easement, leasehold interest, or mineral or water rights.

The identified property may be transferred by assignment of the membership interests in the entity, rather than a deed.

For example, in a forward exchange, a taxpayer may acquire 100 percent of an entity, typically a limited liability company, rather than acquiring actual legal title to the asset owned by the entity.<sup>13</sup> The taxpayer must identify the real property owned by the entity because that property is the replacement property. Stating only the name of the entity, without a description of the real property itself, is not likely to be a sufficient identification. The taxpayer could also state that the real property will be acquired through the acquisition of the interests in the entity, but this should not be required to make the identification valid.

Taxpayers often wait until the last day of the identification period to complete the description and may be in a panic to meet the deadline. This may give rise to errors in the description, such as an incorrect street address. A taxpayer should be meticulous with the description of the identified property and double check it carefully. Once the identification period has expired, the description cannot be changed. The regulations require an unambiguous description. This requirement strongly suggests that errors, such as an incorrect street address or legal description, may be problematic and could result in a failed identification.

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## Incidental Property Rule

For purposes of the identification rules, property which is incidental to a larger item of property is not treated as separate from the larger item.<sup>14</sup> This is known as the “incidental property rule.” Such property is incidental if, in standard commercial transactions, the property is typically transferred with the larger property. Further, the aggregate fair market value of all the incidental property cannot exceed 15 percent of the aggregate fair market value of the larger item of property. For example, as provided in the regulations, furniture, laundry machines and other miscellaneous items of personal property will not be treated as separate property from an apartment building with a fair market value of \$1 million if the aggregate fair market value of the furniture, laundry machines and other personal property does not exceed \$150,000. Thus, the example states, the apartment building, furniture, laundry machines and other personal property are all considered unambiguously described if the legal description, street address or distinguishable name of the apartment building is specified, even if no reference is made to the furniture, laundry machines and other personal property.<sup>15</sup>

Note that the incidental property rule only applies for the purposes of identification. The incidental property still must be accounted for in determination of the realized and recognized gain in the exchange. The multiple asset regulations of Code Sec. 1031 still apply in determining the amount of gain recognized in the exchange.<sup>16</sup> Tax advisors commonly misunderstand the incidental property rule and assume that it also applies to gain calculation. However, incidental personal property is not deemed like-kind to real property just because the incidental personal property does not need to be separately identified. It will still be considered taxable boot in the exchange unless matched up with like-kind personal property. The multiple asset regulations contain no *de minimis* exception.

### Partial Interests

If the taxpayer intends to acquire an undivided interest in the replacement property in a forward exchange, rather than the entire interest in the property, the taxpayer should consider identifying only the percentage of the property being acquired. Alternatively, if the taxpayer is unsure about the exact percentage to be acquired, the taxpayer can identify a value amount for the replacement property, such

as “an undivided interest valued at \$100,000 in the following real property.” If the taxpayer identifies 100 percent of a property and then only acquires a 50-percent undivided interest, the taxpayer may not be deemed to have acquired “substantially the same property as identified.”<sup>17</sup> This is discussed further below. Likewise, if the taxpayer is only disposing of an undivided interest as relinquished property in a parking arrangement, the taxpayer should specify the percentage, or an unspecified percentage interest valued at a specific dollar amount.

The legal description containing the identified property may include a residence that will be used by the taxpayer as a principal residence, and the residence is not a separate legal description or address. For example, farmland may also contain a farmhouse. The taxpayer must use some method to unambiguously describe the portion that will be the like-kind replacement property, such as a map with that portion described, or a metes and bounds description. The taxpayer should be clear to state that the personal residence portion is not part of the replacement property acquired in the exchange in order to avoid a possible problem with the “substantially the same property as identified” requirement, discussed below.

### Personal Property Descriptions

The regulations state that personal property is generally unambiguously described if it is described by a “specific description of the particular type of property. For example, a truck generally is unambiguously described if it is described by a specific make, model, and year.”<sup>18</sup> The truck example works for automobiles and trucks because they are commonly identified by make, model and year for other purposes. However, other types of personal property that are frequently exchanged do not typically have a make, model and year. They are often fungible and easily substituted with similar personal property. For example, railcars are marketed solely by capacity and not by manufacturer or by year of manufacture. It is unclear if the taxpayer must identify a manufacturer or the year of manufacture if the railcars are otherwise largely identical property.

If the taxpayer is too specific in the identification of fungible personal property, then the taxpayer may have a failed exchange if the taxpayer does not acquire that property meeting the exact specifications. On the other hand, if the taxpayer is too general, the identification may be invalid due to ambiguity. The taxpayer will need to balance the need for specificity with the

likelihood of success of acquiring a specific property. For example, if the taxpayer is sure it will acquire a particular piece of equipment, then the taxpayer can be quite specific in the identification. However, if the taxpayer is not sure and may need to acquire another similar piece of equipment, then the taxpayer is better off being less specific in the identification. The regulations do state that personal property is *generally* unambiguously described by a specific description of the particular type of property. This implies that there may be some exceptions to the general rule.

The IRS has issued a ruling that gives an example of an identification of intangibles that was too vague. In the technical advice, the IRS ruled that a taxpayer's written identification of intangible assets was not specific when it included only the following: (1) the name of the seller; (2) a very general description of the property (*i.e.* "Intellectual Property, including but not limited to patents, trademarks, copyrights, software, know-how, designs and other intellectual property assets as may be owned, licensed by or leased by the seller"); and (3) the estimated value. There were no descriptions of the underlying property pertaining to any of these intangible assets.<sup>19</sup>

The incidental property rule also applies to personal property descriptions. The Regulations provide the following example: A spare tire and tool kit will not be treated as separate property from a truck with a fair market value of \$10,000 if the aggregate fair market value of the spare tire and tool kit does not exceed \$1,500. The truck, spare tire, and tool kit are all considered to be unambiguously described if the make, model, and year of the truck are specified, even if no reference is made to the spare tire and tool kit.<sup>20</sup>

## Substantially the Same Property as Identified Requirement

The identified replacement property is treated as received before the end of the exchange period only if the replacement property is *substantially the same property as identified*. The requirement is applied separately to each replacement property received by the taxpayer.<sup>21</sup>

The substantially the same as identified requirement is easily met when the taxpayer acquires exactly what was identified. However, sometimes mistakes are made in the identification. Or perhaps the taxpayer discovers a problem with the identified property, and alterations must be made to the property. These alterations must be done after the identification has been made and the identification period has expired, but before the receipt of the property (the "post ID period"). In such situations, the substantially the same as identified requirement creates problems. The regulations contain three examples to further explain the scope of the requirement, but the examples raise as many questions as they answer.

### The "Fence Example"

In this example, the taxpayer identifies real property P, which consists of two acres of unimproved land. During the post ID period, the owner of real property P erects a fence on the property. The example holds that the erection of the fence on real property P during the post ID period does not alter the basic nature or character of real property as unimproved land. Therefore, the taxpayer is considered to have received substantially the same property as identified.<sup>22</sup>

Rev. Proc. 2000-37 simply states that "the identification must be made in a manner consistent with the principles described in Reg. §1.1031(k)-1(c) for identifying replacement property in a deferred exchange.

The Fence Example infers that a more substantial improvement to unimproved land, if made during the post ID period and not included as part of the identification, would change the nature and character from unimproved land to improved land. Thus, the property, when received by the taxpayer, would no longer be substantially the same property as identified.

The Fence Example is consistent with the identification and receipt requirements of property to be produced. Those requirements provide that any improvements to real property constructed during the exchange period must be described in the identification notice in as much detail as is practicable at the time the identification is made.<sup>23</sup> Minor changes due to usual or typical production changes are not taken into account to determine if the completed improvements are substantially the same property as identified. However, substantial changes to the improvements will cause the received property to

fail the substantially the same property as identified requirement.<sup>24</sup> (The identification of construction will be discussed in further detail in a subsequent article.)

If the taxpayer fails to properly identify improvements to be made during the post ID period, then it may be dangerous to just go ahead and make them anyway. If the improvements cause the property to fail the substantially the same as identified requirement, then the whole property, and not just the new improvements, fails to qualify as replacement property (or relinquished property in a parking arrangement). Thus, a taxpayer should err on the side of caution and include any contemplated improvements in the identification notice or make them after the exchange is over.

Problems can occur because many taxpayers scramble to identify replacement properties and do not have time for due-diligence studies during the identification period. These studies may later reveal significant problems that must be fixed by the seller, or perhaps by an EAT through a parking arrangement, during the post ID period. The Fence Example does provide some leeway for unidentified improvements to be made during the post ID period, but it is unclear how much leeway. For example, suppose the identified replacement property is land with an apartment building, and the taxpayer discovers during the post ID period that the building needs a new roof. A new roof does not seem to change the basic nature and character of the apartment building, but what about other changes such as a new garage or carport on an unimproved portion of the property? Suppose the identified property is land with some old buildings. During the post ID period, the taxpayer discovers environmental problems that will require destruction of the buildings, removal of tanks, grading, etc. Would those improvements change the nature and character of the property?

It would be helpful to have an “incidental improvement” rule, akin to the incidental property rule, that provides that an improvement made during the exchange period does not need to be separately identified if it has a value of 15 percent or less of the identified property. This would be clearer than a test that depends on whether the improve-

ment changes the basic nature and character of the identified property.

### The “75-Percent Safe Harbor” Example

In this example, the taxpayer identifies real property R, which consists of two acres of unimproved land and has a fair market value of \$250,000.<sup>25</sup> The taxpayer acquires 1.5 acres of real property R for \$187,500 and receives \$87,500 in taxable boot. (Both the 75-percent Safe Harbor Example and the Barn Example, below, contain a mathematical error. The remaining cash in both examples should be \$62,500 instead of \$87,500.) The example holds that the portion of real property R that the taxpayer received (1.5 acres) does not differ from the basic nature or character of real property R as a whole (two acres).

It goes on to state what has become known as the “75-percent safe harbor”: the fair market value of the portion of real property R that the taxpayer received (\$187,500) is 75 percent of the fair market value of real property R as of the date of receipt. Accordingly, the taxpayer is

considered to have received substantially the same property as identified.

The example’s use of 75 percent suggests that a taxpayer can identify 100 percent of a replacement property and then acquire as little as 75 percent of that property. While a 75-percent interest is apparently large enough to be substantially the same property as identified, it is unknown what percentage would be too low to be considered as substantially the same as identified. 74 percent? 50 percent?

The 75-percent Safe Harbor Example may suggest that taxpayers exchanging into tenancy in common interests cannot identify the whole property and then acquire an undivided interest below 75 percent. However, it is unclear if acquiring a 50-percent undivided interest rather than a 100-percent interest in property changes the “basic nature and character” of the property as that test is applied in the example. The taxpayer acquiring an undivided interest is receiving a percentage of the whole property, while the taxpayer in the example is receiving 100 percent of a segregated portion of the property. Taxpayers frequently exchange into or out of undivided interests in

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exchanges, so this is an important issue. The common practice has become to identify by undivided percentage, or by a dollar amount equal to an unspecified undivided percentage in the property.

### The “Barn Example”

In this example, the taxpayer identifies real property Q, which consists of a barn on two acres of land and has a fair market value of \$250,000 (\$187,500 for the barn and underlying land and \$87,500 for the remaining land; but remember there is a math error, so this amount should be \$62,500). After the identification period has expired, the taxpayer acquires the barn and underlying land for \$187,500 and receives the balance of \$87,500 (\$62,500) as taxable boot. The Barn Example holds that the barn and underlying land differ in basic nature or character from real property Q as a whole. Thus, B is not considered to have received substantially the same property as identified.<sup>26</sup>

The taxpayer in the Barn Example apparently does not benefit from the 75-percent Safe Harbor. The portion of the identified property received in the Barn Example is 75 percent of the value of the identified property. This does not overcome the conclusion that the barn and underlying land differ in basic nature and character from the identified property as a whole. The Barn Example seems to hold that if the identified property includes both improvements and unimproved land, the taxpayer must acquire the entire property to meet the requirement, although the taxpayer could presumably acquire a 75-percent undivided interest in the whole property.

All of the three examples above state that property is not substantially the same property as identified if it differs in “basic nature and character” when acquired by the taxpayer. Both the Fence Example and the Barn Example imply that some amount of improvements to unimproved land will change the basic “nature or character” of the real property. This is confusing because it appears to contradict the longstanding part of the Code Sec. 1031 regulations relating to the definition of like-kind. That part of the regulations states that “like kind” references the “nature or character” of the property, and not its “grade or quality.” It goes on to state that whether real estate is improved or unimproved relates only to the “grade or quality of the property.”<sup>27</sup> Thus, it infers that improvements do not change the nature or character of the property for the purposes of the like-kind standard. To avoid confusion, a standard other

than “nature and character” should have been used for the substantially the same property as identified requirement, such as a test relating to the extent of any unidentified improvements.

### ABA Safe-Harbor Test

A safe harbor for the substantially the same as identified test is proposed in Question 11 of the American Bar Association’s Comments Concerning Open Issues in Section 1031 Like-Kind Exchanges (July 14, 1995). To meet the proposed safe harbor: (A) either the replacement property must be part of the property that was identified, or the identified property must be part of the replacement property; (B) the fair market value of the replacement property on the date of receipt should be no less than 75 percent, nor more than 125 percent, of the fair market value of the identified property on the date of identification; and (C) the “nature and character” of the replacement property, as that phrase is used in Reg. 1.1031(a)-2(b), must be the same as that of the identified property. The reason for adopting a safe-harbor test rather than a bright-line test is to account for the possibility that replacement properties which fall outside the 75-percent/125-percent value test will still be, for practical purposes, “substantially the same property” as identified.

Note that while the ABA Comments advocate for a 125-percent safe-harbor test, it seems unlikely that the extra 25 percent would qualify as replacement property because it was not identified and thus does not meet the statutory requirement of identification. For example, the taxpayer might want to acquire a contiguous lot that was not identified as part of the replacement property, but the lot would fail the unambiguous description requirement even if it was valued at less than 25 percent of the total identified property.

### Parking Arrangements and the Substantially the Same Property as Identified Requirement

With respect to the identification of relinquished property, Rev. Proc. 2000-37 simply states that “the identification must be made in a manner consistent with the principles described in Reg. §1.1031(k)-1(c) for identifying replacement property in a deferred exchange. For this purpose, the taxpayer may properly identify alternative or multiple properties as provided in Reg. §1.1031(k)-1(c)(4).”<sup>28</sup> Rev. Proc. 2000-37 contains no further details or examples on how to apply

the identification principles of a forward exchange to a parking arrangement.

It seems reasonable that the substantially the same property as identified requirement would mean that the relinquished property identified must be substantially the same relinquished property that is ultimately exchanged. Thus, applying the examples above, if a barn and acreage are identified as relinquished property, the barn and acreage must be exchanged for the parked replacement property. The taxpayer cannot just dispose of the barn and the underlying land in the exchange without the adjoining acreage. If the taxpayer identified two acres of unimproved land as relinquished property, the taxpayer can erect a fence on the relinquished property after the identification, but should avoid erecting a barn. Likewise, the tax-

payer can exchange 75 percent of identified acreage and still meet the substantially the same as identified requirement, but not something substantially less than 75 percent.

## Conclusion

The identification requirement can be a stumbling block in an exchange. The 45-day identification period flies by, and once it has expired, the identification cannot be changed. This article has explored many of the issues that arise with the description of real and personal property. It has also examined the pitfalls of the “substantially the same property as identified” requirement. Future articles will look at other problem areas with the identification requirement.

### ENDNOTES

- <sup>1</sup> A parking arrangement may also be part of a forward exchange if improvements are being constructed on the replacement property.
- <sup>2</sup> Reg. §1.1031(k)-1(c)(2).
- <sup>3</sup> Reg. §1.1031(k)-1(c)(2)(i) and (ii). The identification cannot be made to the taxpayer or a disqualified person as defined in Reg. §1.1031(k)-1(k), unless the disqualified person is the transferor of the replacement property.
- <sup>4</sup> Reg. §1.1031(k)-1(c)(2).
- <sup>5</sup> Code Sec. 7805A and Rev. Proc. 2007-56 (to be discussed in a future article).
- <sup>6</sup> *T.D. Smith*, 73 TCM 2158, Dec. 51,916(M), TC Memo. 1997-109, *aff'd*, CA-4, 97-2 USTC ¶ 50,928, 129 F3d 1260.
- <sup>7</sup> *D. Dobrich*, 74 TCM 985, Dec. 52,314(M), TC Memo. 1997-477, *aff'd*, CA-9, 99-2 USTC ¶ 50,286, 188 F3d 512.
- <sup>8</sup> Reg. §1.1031(k)-1(c)(6).
- <sup>9</sup> Reg. §1.1031(k)-1(c)(1).
- <sup>10</sup> LTR 200718028 (Feb. 5, 2007).
- <sup>11</sup> Reg. §1.1031(k)-1(c)(3).
- <sup>12</sup> Reg. §1.1031(k)-1(c)(7), Example 3.
- <sup>13</sup> LTR 201216007 (Jan. 9, 2012).
- <sup>14</sup> Reg. §1.1031(k)-1(c)(5).
- <sup>15</sup> Reg. §1.1031(k)-1(c)(5)(ii), Example 2.
- <sup>16</sup> Reg. §1.1031(j)-1(b)(1).
- <sup>17</sup> Reg. §1.1031(k)-1(d)(2), Example 4.
- <sup>18</sup> Reg. §1.1031(k)-1(c)(3).
- <sup>19</sup> TAM 200602034 (Sept. 29, 2005).
- <sup>20</sup> Reg. §1.1031(k)-1(c)(5)(ii), Example 1.
- <sup>21</sup> Reg. §1.1031(k)-1(d)(1).
- <sup>22</sup> Reg. §1.1031(k)-1(d)(2), Example 2.
- <sup>23</sup> Reg. §1.1031(k)-1(e)(2)(i).
- <sup>24</sup> Reg. §1.1031(k)-1(e)(3)(i).
- <sup>25</sup> Reg. §1.1031(k)-1(d)(2), Example 4.
- <sup>26</sup> Reg. §1.1031(k)-1(d)(2), Example 3.
- <sup>27</sup> Reg. §1.1031(a)-1(b).
- <sup>28</sup> Rev. Proc. 2000-37, Sec. 4.02(4).

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