

COMPLIMENTS OF:



## THE POWER OF EXCHANGE

Valuable Information for Real Estate Professionals and their Clients

# “DEALER PROPERTY” ISSUES: “FACTORS THE IRS MAY EXAMINE”

Real estate held as “*stock in trade or other property primarily for sale*” is excluded from the tax deferral benefits of IRC Section 1031. Stock in trade describes property which is included in the inventory of a dealer and is held for sale to customers in the ordinary course of business. The gain on the sale of this property is taxed as ordinary income.

### SUBSTANTIATING THE INVESTMENT INTENT

To qualify for a §1031 exchange, a taxpayer must be able to support that their “**intent**” at the time of the purchase was to hold the property for investment. Listed below are some factors the IRS may review to determine whether or not the intent was to hold the property for investment. The burden of substantiating the investment intent is the responsibility of the taxpayer and the items below are not an exhaustive list but provide useful indicators in determining the taxpayer's intent.

- The nature and purpose of the acquisition of the property and the duration of ownership;
- The extent and nature of the taxpayer's efforts to sell the property;
- The number, extent, continuity and substantiality of the sales;
- The use of a business office for the sale of the property;
- The character and degree of supervision or control exercised by the taxpayer over any representative selling the property;
- The time and effort the taxpayer habitually devoted to the sales.

### CAN A “DEALER” PERFORM AN EXCHANGE?

The fact that a taxpayer is considered a dealer does not automatically disqualify them from performing an exchange. A dealer may segregate assets that they intend “to hold for productive use in a trade or business or for investment” from their dealer property. Some dealers have been advised by their attorneys to form a separate entity, such as an LLC, specifically to hold title to property that may be able to qualify for an exchange sometime in the future.

### REVIEW WITH LEGAL AND/OR TAX ADVISORS

It is important that all taxpayers, and particularly dealers, review their transaction with an attorney or accountant before proceeding with an exchange. There are many issues not covered in this short discussion which may affect the ability of a taxpayer to successfully defend an exchange transaction.

In addition to consulting with legal and/or tax advisors, please call Asset Preservation to obtain more information and summaries of key court cases related to dealer property issues.



**ASSET PRESERVATION, INC.**

A National IRC §1031 “Qualified Intermediary”

(800) 282-1031 [www.apiexchange.com](http://www.apiexchange.com)

This information is not intended to replace qualified legal and/or tax advisors. Every taxpayer should review their specific transaction with their own legal and/or tax counsel.  
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