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Valuable Information for Real Estate Professionals and their Clients

AIRCRAFT EXCHANGES

WHAT IS A §1031 EXCHANGE?

A §1031 tax deferred exchange is a method by which a taxpayer trades property, held for investment or business purposes, for replacement property resulting in deferral of capital gains tax on the transaction.

DOES AIRCRAFT QUALIFY FOR AN EXCHANGE?

Many aircraft owners are unaware that Section 1031 of the Internal Revenue Service Code applies to aircraft as well as other types of personal property. By utilizing a 1031 Exchange a taxpayer may defer the significant capital gain taxes and depreciation recapture that would be due when they sell their aircraft.

In general, tax deferred exchanges fall into two types: real property and personal property. Personal property requirements are more restrictive than that of real property exchanges. To qualify for §1031 exchange treatment, personal property can only be exchanged for personal property that falls within the same Product Class or General Asset Class.

SALES AND USE TAXES

Specific to each state, sales and use taxes are always a major concern. Generally speaking, sales taxes are usually due to the local taxing authority at time of transfer of the aircraft and are required to be collected by the seller of the aircraft. If the seller does not collect the sales tax, then the purchaser becomes responsible to pay the use taxes. It is imperative to work closely with your tax advisor to analyze the applicable sales and use tax issues.

REQUIREMENTS FOR AIRCRAFT EXCHANGES

- ▶ The old (relinquished property) and new (replacement property) aircraft must both be used for business or investment purposes. Aircraft used solely for personal use do not qualify. Factors, such as log time, must support the intent for both of the aircrafts to be used for business or investment. Personal use should be kept to a minimum.
- ▶ The exchange must consist of like-kind property. All aircraft and helicopters, except those used in commercial, or contract carrying of passengers or freight, are treated as like-kind under IRS General Asset Class 00.21.
- ▶ If your intent is to defer 100% of the gain, the new aircraft should be equal or greater in value than the old aircraft.
- ▶ What entity holds title to the aircraft? The taxpayer who sells the aircraft must be the same taxpayer who purchases the new aircraft.
- ▶ The replacement aircraft must be unambiguously identified no later than 45 days after the date of transfer of your relinquished aircraft. You must identify your aircraft by Make, Serial Number and Registration Number.
- ▶ The replacement aircraft must be acquired no later than 180 days after the date of transfer of your relinquished aircraft.
- ▶ You may not exchange domestic aircraft for foreign aircraft.