NAR Issue Summary
Federal Tax / Section 1031 Like-Kind Exchange

NAR Committee:

Commercial Federal Policy Committee

Federal Taxation Committee

What is the fundamental issue?

Since 1921, U.S. tax law has recognized that the exchange of one investment or business-use property for another of like-kind results in no change in the economic position of the taxpayer, and therefore, should not result in the immediate imposition of income tax. The like-kind exchange rules permit the deferral of taxes, so long as the taxpayer satisfies numerous requirements and consummates both a sale and purchase of replacement property within 180 days. Real estate investors and commercial real estate practitioners place a very high priority on retaining the current like-kind exchange rules.

I am a real estate professional. What does this mean for my business?

The exchange rules often provide a real estate professional with an opportunity to facilitate two transactions: the sale of the relinquished property and the purchase of the replacement property. Any curtailment of the exchange rules will make both pieces of exchange transactions more difficult to conclude and would mean that many transactions would not take place. The like-kind exchange technique is among the most important of all tax provisions for real estate investors and commercial real estate professionals.

NAR Policy:

NAR opposes any change that would undermine the deferral mechanisms associated with exchanges or lead to fewer transactions.

The like-kind exchange technique is fundamental to the real estate investment sector. The current law provides investors with a great deal of flexibility in managing their real estate portfolio. Real estate is essentially an illiquid asset that requires substantial commitments of cash. Flexibility is needed in order to assure the free movement of property and capital. This, in turn, results in economic growth and job creation.

Opposition Arguments:

Opponents of NAR policy may argue that deferring taxation of any investment is

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improper, especially when it has been disposed of. Moreover, with capital gains tax rates for most individuals at their lowest level since World War II (20% maximum), the burden on investments is modest.

Legislative/Regulatory Status/Outlook

No bipartisan legislation restricting Section 1031 like-kind exchanges has been introduced in the 116th Congress, which began in January 2019. However, in the past, bills have been introduced in both the House and Senate that would limit the use of the like-kind exchange deferral as a way of partially offsetting the cost of various other provisions.

Of more concern, however, is the fact that the Biden presidential campaign has proposed the repeal of Section 1031 for taxpayers with incomes of more than $400,000 per year in order to offset the cost of another proprosal.

NAR is working with other interested stakeholders to oppose the repeal or limitation of the like-kind exchange provision and to educate Members of Congress and their staffs on the importance of this provision to the economy. For example, NAR is an active member of two separate coalitions devoted to preserving the 1031 like-kind exchange. These coalitions have funded two separated studies on the impact that repealing Section 1031 would have on the economy and on the real estate sector. Moreover, the coalitions continue to have meetings with Members of Congress to explain the importance of tax-deferred exchanges in their states and districts. Also, NAR lobbyists often mention the importance of keeping 1031 when meeting with Members and staff on other issues.

Current Legislation/Regulation (bill number or regulation)

None at this time.

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