Do you *REALLY* need Professional Help with 1031?

The short answer is YES.

In order to realize the Safe Harbor protection provided by Section 1031 the taxpayer must use a Qualified Intermediary (QI), pursuant to an exchange agreement, who will provide the mandatory mechanics of an exchange. One of the many Section 1031 requirements is that the QI hold the proceeds from the sale of the Relinquished Property. Because of the fiduciary responsibility placed on the QI, you want to choose an established company that has an extensive knowledge and history of managing exchanges. Professional QI's should be members of the Federation of Exchange Accommodators (FEA), the only National Trade Organization formed to represent the QI industry. FEA provides education to the members, public and legislative branches of government, in addition to a Code of Ethics by which all members are bound. The highest achievement that a member can attain is to be a Certified Exchange Specialist (CES). This certification requires the individual to be a member of FEA, years of experience, a demonstration of a thorough knowledge of Section 1031 by passing a rigorous exam and staying abreast of changes in the industry through continuing education. Without a professional QI the IRS may not recognize a transaction as an exchange, thereby making it ineligible for tax deferment status.

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Anyone who is thinking about selling a "business use" or investment property and is planning on reinvesting into another investment property should consider a 1031 Tax Deferred Exchange.

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The Benefits of Exchanging vs. Selling

- A Section 1031 exchange is one of the few tax planning tools available to postpone or potentially reduce taxes due on the sale of Investment Properties.
- By deferring the tax, you have more money available to invest in another property. In effect, you receive an interest free loan from the federal government, in the amount you would have paid in taxes without an exchange.
- Any gain from depreciation recapture is postponed.
- You can acquire and dispose of properties to reallocate your investment portfolio without paying tax on any gain.

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WHAT IS A 1031 Tax Deferred Exchange?

Section 1031 of the Internal Revenue Code provides that no gain or loss shall be recognized on the exchange of property held for productive use in a trade or business, or for investment. A tax-deferred exchange is a method by which a property owner trades one or more Relinquished Properties for one or more Replacement Properties of "like-kind", while deferring the payment of federal income taxes and some state taxes on the transaction.

The like-kind exchange under Section 1031 is tax-deferred, not tax-free. When the Replacement Property is ultimately sold (not as part of another exchange), the original deferred gain, plus any additional gain realized since the purchase of the Replacement Property, is subject to tax.

From FEA website: www.1031.org

Basic Things You Need to Know About 1031 Exchanges

CLX Exchange Accommodators will help you harness the power of wealth building through tax deferral strategies under IRC Section 1031

1. Relinquished and Replacement Properties must be "Like Kind": Like-kind simply means investment or "business use" real property that can be located anywhere in the United States. The Section 1031 does not apply to taxpayer's personal residence. Properties must not be used for personal use by the taxpayer for more than 14 days per year, or 10% of the actual number of days the property has been rented in a given year, whichever is less.

2. Taxpayer/Exchanger must retain a Qualified Intermediary (QI) to qualify for the Safe Harbor: The sale of the Relinquished Property and the purchase of the Replacement Property must be handled by the QI. The QI cannot be the taxpayer or an agent of the taxpayer (accountant, attorney, realtor, employee, etc.)

3. Must enter into Exchange Agreement with QI prior to close of Relinquished Property: Since the taxpayer cannot ever have actual or constructive receipt of the proceeds from the sale of the Relinquished Property it is critical that the QI is the "Seller" of the property and receives all the proceeds directly from the closing company. The QI then uses the proceeds to acquire the Replacement Property. Most QI's prefer to have at least a week prior to closing to prepare all the agreements, assignments and instructions for the closing company.

4. The Safe Harbor rule allows for a "delayed" exchange: Prior to IRC Section 1031, an exchange involved a simultaneous swap of one property for another between two parties. But, with the current safe harbor granted under Section 1031 the vast majority of exchanges are delayed, three party exchanges . In a delayed exchange you need a QI, who holds the proceeds after it "sells" your Relinquished Property and uses the proceeds to "buy" the Replacement Property for you.

5. You must designate Replacement Property: Within 45 days of the sale of your Relinquished Property you must designate Replacement Property in writing to the QI, specifying the property you want to acquire by address or legal description. Normally, the taxpayer enters into the contract for the Replacement Property and assigns it to the QI. The QI must acquire the Replacement Property with title in the name of the taxpayer within 180 days of the sale of the Relinquished Property. You start counting when the sale of the Relinquished Property closes.

6. You can designate multiple Replacement Properties: The Section 1031 allows the taxpayer to designate up to three properties as the designated Replacement Property(s) with no restrictions. Alternatively, you can designate more properties if you come within certain valuation tests. For example, you can designate more than three potential Replacement Properties, as long as the fair market value of the Replacement Properties does not exceed 200% of the total value of all the Relinquished Properties.

7. Boot equals potential tax liability: Boot is any property received by the taxpayer in the exchange which is not like-kind to the Relinquished Property. It's characterized as either "cash boot" or "mortgage boot" and will be taxed, generally, as a capital gain. To avoid cash boot all of the net proceeds from the sale of the Relinquished Property must be used to acquire the Replacement Property. Mortgage boot can be avoided if the taxpayer acquires debt equal to, or greater than, the debt that was paid off.

For additional information visit our website at www.1031CLX.com.

We will work with your tax and/or legal advisor(s) to structure the most beneficial exchange for you.

By properly completing IRC Section 1031 Tax Deferral Exchange through CLX Exchange Accommodators, you can increase your buying power by 20%!