

Timeshares and REITs

Does a Timeshare or Share in a REIT Qualify for Tax Deferral?

1031

Knowledge

Only real property can be exchanged under Internal Revenue Code §1031 as qualifying “like-kind” property. Any real property held for productive use in a trade or business or for investment can be considered like-kind property.

CAN A TIMESHARE QUALIFY FOR A 1031 EXCHANGE?

There are generally two types of timeshares which can be purchased by a taxpayer:

1. The first variation was widely promoted in the 1970's and 1980's and generally consists of a right-to-use type of unit at a particular location for a specified period of time. These are generally considered personal property and are not eligible for 1031 tax deferral.
2. The other variation has become more popular recently and generally consists of a taxpayer purchasing legal title, not merely rights to use a property, to a specific unit for a specified period of time. In many cases, the taxpayer receives a deed to the property. This second variation is generally considered real property and may qualify for 1031 exchange tax deferral.

Even if the timeshare owner has title to a real property interest, they should be able to support that the primary intent for holding the timeshare is for investment purposes and not personal use. In *Dewey vs. Commissioner*, the IRS did not allow 1031 exchange treatment because they determined the taxpayer's primary purpose for holding a one-week timeshare was personal enjoyment and not with the intent to hold for investment purposes. As with any 1031 exchange, the taxpayer should be able to substantiate that the primary intent for holding property was either for investment or business purposes.

DO SHARES IN A REIT QUALIFY FOR A 1031 EXCHANGE?

A real estate investment trust, commonly referred to by the acronym “REIT,” is an entity in which many taxpayers pool their resources by purchasing shares in a REIT which owns commercial properties. The REIT acquires, owns and manages the commercial properties for the benefit of the REIT shareholders. The individual shares owned by the taxpayers in the REIT are considered personal property, not real property, and do not qualify for tax deferral under IRC §1031.

However, the REIT entity who holds title to the real property may be able to perform a 1031 exchange of a property held in the REIT's portfolio since the REIT at the entity level holds title to real property held for investment purposes.

Taxpayers and their legal or tax advisors are encouraged to contact our National Headquarters to discuss specific timeshare or REIT issues in more detail.

Compliments of:



HQ 800.282.1031 | NY 866.394.1031
apiexchange.com | info@apiexchange.com