

# Vacation Home Exchanges

BARRY E. MOORE V. COMM., T.C. MEMO. 2007-134

1031

Knowledge



Many taxpayers who own vacation homes want to explore the potential of performing a 1031 exchange. One older Tax Court decision, [Barry E. Moore v. Commissioner, T.C. Memo. 2007-134](#), provides a significant case concerning whether a vacation home would be considered “held for investment.” Today, [Revenue Procedure 2008-16](#) provides a safe harbor for vacation homes held for investment and taxpayers should adhere to this revenue procedure for exchanges of vacation homes.

## LAKEFRONT PROPERTY EXCHANGED FOR LAKEFRONT PROPERTY

In Moore v. Comm., the taxpayers exchanged a lakefront vacation property with a mobile home in Lincoln County, Georgia (the Clark Hill property) for a lakefront property with a larger five bedroom and 4.5 bath house on 1.2 acres in Forsyth County, Georgia (the Lake Lanier property). The taxpayers, in this case, argued that both of these properties were held for investment, specifically for long-term appreciation purposes, and thus qualified for tax deferral under IRC §1031. However, based upon the taxpayer’s significant personal use of the property, the court concluded that both the relinquished Clark Hill property and the replacement Lake Lanier property should be viewed as held primarily for the taxpayer’s personal use and enjoyment. In reaching this conclusion, the court considered the following: (i) the taxpayers never rented or attempted to rent the property to others; (ii) the taxpayers deducted mortgage interest as a “home mortgage interest” expense rather than investment interest expense; (iii) the taxpayers did not take (and probably did not qualify for) depreciation or other tax benefits associated with an investment property under the Internal Revenue Code, including deductions for maintenance expenses.

The court accepted the taxpayer’s argument that both the relinquished and replacement properties were held for appreciation but concluded that “...the mere hope or expectation that the property may be sold at a gain cannot establish investment intent if the taxpayer uses the property as a residence. The proposition that holding a primary or secondary (e.g. vacation) residence motivated in part by an expectation that the property will appreciate in value is insufficient to justify the classification of that property as property ‘held for investment’ under Section 212(2) and, by analogy, Section 1031. There is no convincing evidence that the properties were held for the production of income, and there is convincing evidence that petitioners and their families used the properties as vacation retreats. The evidence overwhelmingly demonstrates that petitioners’ primary purpose in acquiring both the Clark Hill and Lake Lanier properties was to enjoy the use of those properties as vacation homes, i.e. as secondary personal residences.”

## ISSUES TO CONSIDER WHEN CONTEMPLATING A VACATION HOME EXCHANGE

Taxpayers should always review the guidance contained in Revenue Procedure 2008-16 which established specific criteria for a dwelling unit to be considered held for investment purposes.

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