

# Intent to Hold for Investment vs Personal Use

## Lessons Learned from Reesink V. Commissioner

1031

Knowledge



A property will be eligible for exchange under Internal Revenue Code Section 1031 only if the taxpayer is able to demonstrate the intent to hold the property for productive use in a trade or business or for investment at the time of the exchange. See e.g., *Bolker v. Commissioner*, 81 T. C. 782, 804 (1983), aff'd. 760 F.2d 1039 (9th Cir. 1985); *Click v. Commissioner*, 78 T. C. 225, 231 (1982).

In the Tax Court case, *Reesink v. Commissioner*, (April 23, 2012) T.C. Memo 2012-118, husband and wife purchased a residential house as a replacement property with the intent to rent the property. Unfortunately, the Reesinks were unable to find a tenant and obtain the rent they wanted, so they decided to sell their current residence and move into the rental home that they acquired in the 1031 exchange. They moved into the rental home only eight months after it was purchased in the 1031 exchange. Nevertheless, the Tax Court found that the Reesinks intended to hold the rental property as an investment at the time they engaged in the 1031 exchange.

In its decision for the taxpayer, the Tax Court distinguished *Goolsby v. Commissioner*, (April 1, 2010); T.C. Memo 2010-64, a case in which a series of factors established that the taxpayers intended to use the replacement property as a residence following a 1031 exchange, the Tax Court found the following evidence persuasive:

- The Reesinks placed many rental flyers throughout the town advertising the house as available for rent;
- The Reesinks showed the house to two different potential tenants;
- The taxpayers refrained from using the property for recreational use prior to moving into the property;
- The Reesinks decided to sell their personal residence almost six months after purchasing the replacement property;
- The Reesinks waited over eight months after acquiring the property to move in.

The Reesinks also presented corroborative testimony supporting the foregoing facts. For example, one of the taxpayer's siblings testified that the taxpayers frequently mentioned their desire to move into the town where the replacement property was located but that they did not plan to do so for at least 3-4 years after their oldest child (who was 14 at the time) had graduated from high school. Additionally, the taxpayer's income had decreased substantially due to illness and they did not feel they had enough cash flow to continue to pay the expenses associated with two rental properties in addition to their primary residence in San Francisco, California.

Like *Goolsby*, the *Reesink* case shows the need for objective evidence of the taxpayer's intent to acquire property for use in a trade or business or to be held for investment. Every taxpayer should make significant and meaningful efforts to treat a replacement property acquired in a 1031 exchange as a qualifying property held for investment before converting this property into a personal residence or for any other non-qualifying purpose. Importantly, the intent is established not only by what happens during the exchange period but also what happens before and after the exchange period as well. The IRS and Tax Courts will look at all of the facts and circumstances regarding an exchange transaction to ascertain the taxpayer's intent at the time of the exchange. In other words, the intent to hold requirement is very much a case-by-case analysis and must be applied separately to each independent scenario. We note however, that different principles can apply where a taxpayer either receives property from an entity or trust –or– transfers to an entity or trust.

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