

# Timberland and Standing Timber

Exchanging This Valuable Renewable (and Growing) Resource

1031

Knowledge



To qualify for tax deferral under IRC Section 1031, both the property relinquished and the property acquired in the exchange must be “like-kind,” real property and the taxpayer must hold the properties “for productive use in a trade or business, or for investment.” Property held primarily for sale (or inventory) is not held for use in a trade or business or for investment. The IRS and tax courts have construed the “like-kind” real property requirement broadly such that an interest in a parcel of real estate is generally like-kind to all other interests characterized as real estate under state law, regardless of whether such real estate is improved or unimproved. Subject to a few exceptions, real estate will be considered like-kind without reference to how the land is used. Thus, a fee interest in raw land can be exchanged for a fee interest in an improved parcel with a commercial building or a parcel with standing timber. See e.g., Rev. Rul. 78-163 approving an exchange of timberland owned by a producer of forest-related products for bare land of lesser value owned by a state. See also, Rev. Rul. 72-515 approving an exchange of unencumbered fee title to timberlands that differed in timber quality and quantity.

Ordinarily, growing timber is considered part of the land. In *Hutchins v. King*, 68 U.S. 53, 59 (1863), the Supreme Court stated that “timber growing upon the land constituted a portion of the realty. Additionally, in *Laird v. United States*, 115 F. Supp. 931 at 933 (W.D. Wis. 1953), growing timber was part of the land. Thus, the quantity, quality, age, and species of timber may relate to the grade or quality of the timberland but does not impact the question of whether the timberland is like-kind to other real estate, whether or not the replacement land is timberland. See Rev. Rul. 72-515 and PLR 200541037 where the IRS ruled that a fee interest in timberland is “like-kind” to a scenic conservation easement under §1031. See also PLR 8621012 and Rev. Rul. 78-163 approving an exchange of timberland owned by a producer of forest-related products for bare land.

In a properly structured transaction, standing timber can be exchanged for other qualifying real property interests. The question of whether a property interest personal property (which does not qualify for 1031 tax deferral) or real property (which does qualify for 1031 tax deferral) is resolved under state law. Differences in state law do exist, so competent legal and tax counsel is necessary whenever fee title to the property is not being sold. Factors to consider when timber interests are exchanged include:

- Is the timber right being conveyed limited or perpetual?
- Are the timber rights being conveyed with a fee interest or pursuant to a lease with a term greater than 30 years including options?
- Are rights to cut timber in the nature of a service contract as opposed to a property right?
- Are the rights to harvest timber conveyed by deed, or bill of sale or license agreement?
- Does the conveyance instrument contain an obligation to cut and remove timber?

## Compliments of:



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