

Intent to Hold for Investment vs Sale

Lessons from Allen V. United States



Is a 12-year holding period long enough for property to be considered to be “held for investment?” At first blush, a holding period longer than a decade might seem sufficient. However, as shown in [Allen v. U.S. 113 aff’d2. d 2014-2262 \(2014\)](#), the intent of the taxpayer is more important than the length of the holding period. In *Allen*, the taxpayer admitted that he originally acquired the property to develop and resell it. He argued that, over the course of time, he changed his mind and decided not to develop the property, but continued to hold it “for investment” until he could sell it.

Whether a taxpayer intends to hold a property for resale or to hold for investment at the time of an exchange can be a critical issue if an exchange is challenged by the IRS. Proving such intent can be difficult. A taxpayer’s intent in holding a property is a question of fact. See *Austin v. Commissioner*, 263 F.2d 460, 461 (1959). Courts take into account a number of factors to determine if the property was held for sale or for investment. See Asset Preservation’s article entitled [“Property Held for Sale: Factors the IRS May Examine.”](#)

In *Allen*, the court found that the taxpayer originally acquired the property for development and resale and that the taxpayer failed to adequately prove that he changed his intent to “holding the property for investment.” In deciding the case in favor of the IRS, the Tax Court cited the following evidence persuasive:

- Allen purchased the property in 1987, and from 1987 to 1995 Allen attempted to develop the property on his own;
- Allen admitted he initially intended to develop the property on his own and then searched for partners to help develop the property;
- From 1995 to 1999 Allen brought in partners who contributed capital for development;
- In 1999, Allen sold the property to a developer;
- Allen made significant and extensive efforts to develop the property over many years, and failed to substantiate when his actions changed with regard to the property;
- Ultimately, Allen failed to provide any evidence to prove that his intent changed during the time of his ownership of the property.

Although the intent with respect to a property can change over time, the intent during the period immediately prior to the sale is critical. See, *Tibbals v. United States*, 362 F.2d 266, 273 (1966). The Court determined in *Allen* that the taxpayer failed to show when, how, or why his intent changed.

The *Allen* case demonstrates the need for solid evidence, documentation and establishing clear facts and circumstances whenever a taxpayer asserts that their intent with regard to an exchange property changed from “intent to sell” to “intent to hold for investment.” In the event of an audit, the IRS and state tax authorities will require objective evidence supporting the taxpayer’s assertion of their change of intent to one compatible with Section 1031. Every taxpayer should make significant and meaningful efforts to document and collect evidence to establish such change in intent.

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