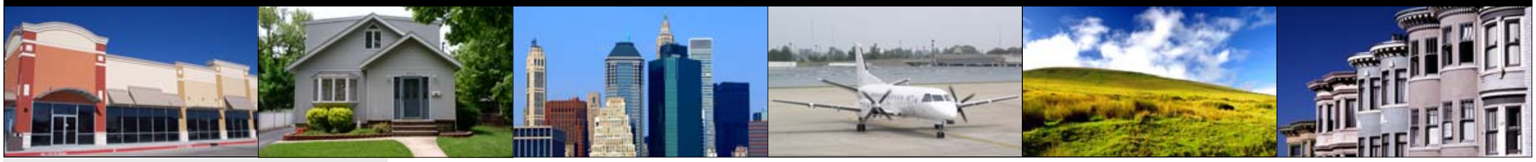
How Long Must an Investment Property be Held for the IRS to Consider it a "Like-Kind" Property?



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IRC §1031 states that property "held for productive use in a trade or business or for investment" must be exchanged for like-kind property. There is much confusion and misinformation among real estate agents and investors on the issue of what is viewed as "held for investment." Most of this confusion stems from the fact that neither the IRS nor the Regulations provide a comprehensive definition of the phrase "held for investment." (The regulations do state, however, that unproductive real estate held by a non-dealer for future use or future appreciation, is held for investment.)

A MORE COMPLETE PERSPECTIVE

There is no safe holding period for property to automatically qualify as being "held for investment."

To qualify for a 1031 exchange, a taxpayer must be able to support that their "intent" at the time of the purchase was to hold the property for investment.

Time is only one factor at which the IRS looks in determining the Exchanger's intent for both the relinquished and replacement properties. The IRS may look at all the facts and circumstances of an investor's situation to determine the Exchanger's true intent for acquiring, holding, and selling properties involved in an exchange. Ideally, an investor would have a variety of ways to support that their intent was to hold for investment purposes.

If the investor has the intent to resell the property for a profit within a short amount of time, and not to hold for long-term investment, then the exchange will probably not qualify for deferral. Please see Asset Preservation article entitled "Dealer Property" Issues (31) to review more of the factors the IRS talks out to determine whether property is being held primarily for investment vs. for sale.

TWO ADDITIONAL PERSPECTIVES

In one private letter ruling (PLR 8429039), the IRS stated that a minimum holding period of two years would be sufficient. Although a private letter ruling does not establish legal precedent for all investors, there are many advisors who believe two years is a conservative holding period, provided no other significant factors contradict the investment intent.

Other advisors recommend that Exchangers hold property for a minimum of at least twelve months. The reason for this is twofold: (1) A holding period of 12 or more months means the investor will usually reflect it as an investment property in two tax filing years. (2) In 1989, Congress had proposed a one year holding period. Although this proposal was never incorporated into the tax code, some believe it represents a reasonable minimum guideline.

The investor's "intent" in holding both the relinquished and replacement properties is the central issue. Each Exchanger and their advisors should be able to substantiate properties relinquished and acquired in a tax deferred exchange were "held for investment."

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