

How Long To Hold?

1031
Knowledge

IRC Section 1031 specifies that property relinquished and property acquired in a 1031 exchange must be held by the taxpayer “for productive use in a trade or business or for investment.” There is much confusion and misinformation regarding the meaning of the phrase “held for investment.” At Asset Preservation, Inc., we are often asked, “How long do I need to hold my property to qualify for a 1031 exchange?” Although some tax and legal advisors will say that the property should ideally be held for two or more years, this is only a partial answer and does not cover all cases. A shorter holding period will work in some cases given the right facts and circumstances.

A MORE COMPLETE PERSPECTIVE

There is no holding period specified in the tax law after which relinquished property or replacement property will qualify as “held for investment.” Stated simply, a taxpayer must have the intent to hold the property for investment at the time of the exchange. For these purposes, “intent” means the taxpayer’s subjective intent. In assessing the taxpayer’s subjective intent at the time of the exchange, the IRS will generally consider objective factors that support or negate the taxpayer’s claim that he or she intended to hold property for investment purposes or for use in a trade or business. Time is only one factor that may be considered in assessing the taxpayer’s intent. All facts and circumstances surrounding the taxpayer’s ownership and transfer of property will be considered in determining the taxpayer’s intent. Ideally, a taxpayer could point to multiple factors to establish their intent property is held for investment, such as a long period of ownership, a use consistent with an investment use or business use, and a tax reporting history that demonstrates the investment or business use of the property.

Contrary facts, such as a sale of the property for a profit within a short period following the taxpayer’s acquisition of the property may lead the IRS to conclude that the taxpayer’s purpose in acquiring the property was to sell for a profit (i.e., an intent to flip) rather than to hold for investment. In that case, the exchange transaction would likely fail to qualify for tax deferral. See [Property Held for Sale](#) to review more of the factors the IRS might examine to determine whether property is being held primarily for investment purposes versus for sale.

ADDITIONAL PERSPECTIVES AND RELEVANT TAX COURT DECISIONS

A number of tax court decisions have examined the taxpayer’s subjective intent to hold the property for productive use in a trade or business or for investment at the time of the exchange. One line of cases deals with pre-exchange transfers from entities. See e.g., *Bolker v. Commissioner*, 81 T. C. 782,804 (1983), aff’d, 760 F.2d 1039 (9th Cir. 1985).

A couple of recent tax court decisions also provide useful insight into the specific factors which support or negate the taxpayer’s intent to hold for investment. In [Goolsby v. Commissioner](#), (April 1, 2010); [T.C. Memo 2010-64](#), the tax court determined replacement property was not held for investment. See [Intent to Hold for Investment – Part I, Lessons Learned from Goolsby v. Commissioner](#) to see why the tax court arrived at this determination. However, in [Reesink v. Commissioner](#), (April 23, 2012) [T.C. Memo 2012-118](#), the tax court determined the taxpayer intended to hold the property for investment at the time of the exchange transaction. See [Intent to Hold for Investment – Part II, Lessons Learned from Reesink v. Commissioner](#) to see why the tax court determined the Reesink’s had enough facts to support their investment intent, even though they ultimately moved into the replacement property eight months after acquiring the property in an exchange.

Taxpayers must disclose to the IRS the amount of time they held the relinquished property when they report the 1031 exchange on [IRS Form 8824 \(Like-Kind Exchanges\)](#). As discussed, the taxpayer’s intent in holding both the relinquished and replacement property at the time of the exchange is the central issue. A short holding period invites an audit where additional facts will be analyzed to determine the taxpayer’s subjective intent. Every taxpayer and their tax and/or legal advisors should be able to substantiate that both the property relinquished and acquired in a 1031 exchange were held for investment.

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