

2009 DRAFTING REQUEST

Assembly Amendment (AA-AB527)

Received: 02/08/2010

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Kelda Helen Roys (608) 266-5340**

By/Representing: **herself**

This file may be shown to any legislator: **NO**

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Real Estate - landlord/tenant
Real Estate - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Roys@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Changes to time for contracting and to obtain financing and adding exemption for real estate exchange

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 02/09/2010	jdye 02/12/2010		_____			
/P1			jfrantze 02/12/2010	_____	sbasford 02/12/2010		
/1	pkahler 02/22/2010	jdye 02/22/2010	rschluet 02/22/2010	_____	sbasford 02/22/2010	sbasford 02/22/2010	

FE Sent For:

<END>

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/?	pkahler 02/09/2010	jdye 02/12/2010		_____			
/P1		<i>1/22 jld</i> ifrantze 02/12/2010		_____	sbasford 02/12/2010		

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Handwritten notes and signatures:
1/22 jld
ifrantze
02/12/2010
[Signature]

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/?	pkahler	PI 2/12jld	Jb	2/12			

FE Sent For:

<END>

Welda Boys subject to AB 527 2-8

(2)

p 5, l 3

take out " w/in 60 days after

the date of the offer

(additional 60 days after offer)

✓

failure to enter - w/in 90 days

(both offer & contract must be w/in 90 days)

✓ offer - owner has no obligation to

negotiate or accept

(in place of p 5, l 11 + 12)

limit to 90 days to make offer &

enter into a contract

✓ p 5, l 15 → ^{give} 3 months to obtain financing

✓ p 8, ^{add} exclusion for

1031 ~~transfer~~
real estate
exchange

transaction authorized by
sec 1031 of IRS code

Internal Revenue Code section 1031

From Wikipedia, the free encyclopedia

See also: Tenants in common 1031 exchange

Under **Section 1031 of the United States Internal Revenue Code** (26 U.S.C. § 1031), the exchange of certain types of property may defer the recognition of capital gains or losses due upon sale, and hence defer any capital gains taxes otherwise due.

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- 1 Summary
- 2 Section 1031 Like-Kind Exchanges
 - 2.1 Boot
 - 2.1.1 Boot limitations
- 3 Time limits
 - 3.1 Difficulties involved in meeting limits
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- 5 An alternative to the 1031 exchange
- 6 Examples of a 1031 exchange
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- 8 References
- 9 See also
- 10 External links

Summary

To qualify for **Section 1031 of the Internal Revenue Code**, the properties exchanged must be held for productive use in a trade or business or for investment. Stocks, bonds, and other properties are listed as expressly excluded by **Section 1031 of the Internal Revenue Code**, though securitized properties are not excluded. The properties exchanged must be "like-kind", *i.e.*, of the same nature or character, even if they differ in grade or quality. Personal properties of a like class are like-kind properties. Personal property used predominantly in the United States and personal property used predominantly elsewhere are not like-kind properties.

Real properties generally are of like-kind, regardless of whether the properties are improved or unimproved. However, real property in the United States and real property outside the United States are not like-kind properties.

Taxpayers may wonder whether items such as equipment used on a property are included in the lump-sum sale of the property, and if they are able to be deferred. Under Treasury regulation §1.1031(k)-1(c)(5)(i), property that is transferred together with the larger item of value that does not exceed 15% of the fair market value of the larger property does not need to be identified within the 45 day identification period but still needs to be exchanged for like kind property to defer gain.

Cash to equalize a transaction cannot be deferred under Code Section 1031 because it is not like-kind. This cash is called "boot" and is taxed at a normal capital gains rate.

If liabilities assumed by the buyer exceed those of the seller (taxpayer), the realized gain of the seller will be not only be realized, but recognized as well. If however, the seller assumes a greater liability than the buyer, the realized loss cannot offset any realized and recognized gain of receiving boot such as cash or other personal property considered boot.

Originally, 1031 cases needed to be simultaneous transfers of ownership. But since *Starker vs. U.S.* (602 F.2d 1341), a contract to exchange properties in the future is practically the same as a simultaneous transfer. It is under this case, decided in 1979, that the rules for election of a delayed 1031 originated. To elect the 1031 recognition, a taxpayer must identify the property for exchange before closing, identify the replacement property within 45 days of closing, and acquire the replacement property within 180 days of closing. A Qualified Intermediary must also be used to facilitate the transaction.

Section 1031 Like-Kind Exchanges

Section 1031(a) of the Internal Revenue Code (26 U.S.C. § 1031) states the recognition rules for realized gains (or losses) that arise as a result of an exchange of like-kind property held for productive use in trade or business or for investment. It states that none of the realized gain or loss will be recognized at the time of the exchange.

It also states that the property to be exchanged must be identified within 45 days, and received within 180 days.^[1]

1031(b) states when like-kind property and boot can be received. The gain is recognized to the extent of boot received.

1031(c) covers cases similar to those in 1031(b), except when the transaction results in a loss. The loss is not recognized at the time of the transaction, but must be carried forward in the form of a higher basis on the property received.

1031(d) defines the basis calculation for property acquired during a like-kind exchange. It states that the basis of the new property is the same as the basis of the property given up, minus any money received by the taxpayer, plus any gain (or minus any loss) recognized on the transaction. If the transaction falls under 1031(b) or (c), the basis shall be allocated between the properties received (other than money) and for purposes of allocation, there shall be assigned to such other property, an amount equivalent to its Fair Market Value at the date of the exchange.

1031(e) stipulates that livestock of different sexes do not qualify for like kind exchange.

1031(h)(1) stipulates that real property outside the United States and real property located in the United States are not of like kind.

The sale of the relinquished property and the acquisition of the replacement property do not have to be simultaneous. A non-simultaneous exchange is sometimes called a **Starker Tax Deferred Exchange** (named for an investor who challenged and won a case against the IRS). See *Starker v. United States*, 602 F.2d 1341, 79-2 U.S. Tax Cas. (CCH) paragr. 9541, 44 A.F.T.R.2d 79-5525 (9th Cir. 1979).^[2] For a non-simultaneous exchange, the taxpayer must use a Qualified Intermediary, follow guidelines of the Internal Revenue Service, and use the proceeds of the sale to buy more qualifying, like-kind, investment or business property. The replacement property must be “identified” within 45 days after the sale of the old property and the acquisition of the replacement property must be completed within 180 days of the sale of the old property.



PI
JLD

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT ,
TO 2009 ASSEMBLY BILL 527**

SOON
(in 2-9)
D-note

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 4, line 19: delete "offer to purchase the community" and substitute
3 "offer, and to enter into a contract, for the purchase of the community".

4 **2.** Page 5, line 3: delete "60 days after the date of the offer" and substitute "90
5 days after the date of the notice".

6 **3.** Page 5, line 9: delete lines 9 to 16 and substitute:
7 **"(3) OFFER BY ASSOCIATION.** (a) For a period of 90 days after the date of the notice
8 in sub. (2) (a), a residents' association shall have the right to make an offer to, and
9 to enter into a contract with, the owner for the purchase of the community. The owner
10 has no obligation to negotiate concerning, or to accept, any offer made by a residents'
11 association. If the owner and residents' association enter into an agreement for the
12 sale of the community within the 90-day period after the date of the notice under sub.

1 (2) (a),[✓] the owner shall allow the residents' association[✓] up to 3[✓] months to obtain
2 financing for the purchase if additional time is necessary."[✓]

3 **4.** Page 8, line 19: after that line insert:

4 "(g) A real estate exchange described under section 1031 of the[✓] Internal
5 Revenue Code."

6 (END)

Justo

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

date

LRBa1497/dn

PJK:.....

Jld

I think this covers everything you requested. I thought the changes would be easier to see in a simple amendment than in a substitute amendment.

Let me know if you'd like any changes or if I've missed anything you want included. ✓

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa1497/P1dn
PJK:jld:jf

February 12, 2010

I think this covers everything you requested. I thought the changes would be easier to see in a simple amendment than in a substitute amendment.

Let me know if you'd like any changes or if I've missed anything you want included.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

Kahler, Pam

From: Basford, Sarah
Sent: Monday, February 22, 2010 12:16 PM
To: McWilliams, Emily
Cc: Kahler, Pam
Subject: RE: Draft review: LRB 09a1497/P1 Topic: Changes to time for contracting and to obtain financing and adding exemption for real estate exchange

P-drafts cannot be jacketed so I will let the drafter know to re-draft it to a /1.

Sarah Basford

Senior Program Assistant
Legislative Reference Bureau
1 East Main, Suite 200
(608) 266-3561
sarah.basford@legis.wisconsin.gov

From: McWilliams, Emily
Sent: Monday, February 22, 2010 12:13 PM
To: Basford, Sarah
Subject: RE: Draft review: LRB 09a1497/P1 Topic: Changes to time for contracting and to obtain financing and adding exemption for real estate exchange

Sarah,

Kelda finally had a chance to review this and it incorporates all the changes she wanted! May I ask you send us a jacket for introduction? Since this was a p-draft, your email didn't include the handy "jacket" button. :-)

Thanks so much for your help!

Emily

From: Basford, Sarah
Sent: Friday, February 12, 2010 10:22 AM
To: Rep.Roys
Subject: Draft review: LRB 09a1497/P1 Topic: Changes to time for contracting and to obtain financing and adding exemption for real estate exchange

Following is the PDF version of draft LRB 09a1497/P1 and drafter's note.

2-22
by phone

also, per Emily, clarify that 3 months for financing
is from date of agreement

02/22/2010



rmis

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

ASSEMBLY AMENDMENT,
TO 2009 ASSEMBLY BILL 527

today, if possible
Washburn

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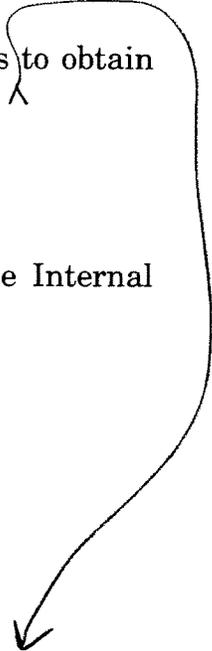
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3 4. Page 8, line 19: after that line insert:

4 “(g) A real estate exchange described under section 1031 of the Internal
5 Revenue Code.”.

6 (END)



✓
from the date
on which they entered
into the agreement