



*The Voice of the 1031 Industry*

## **SECTION 1031 IS A VITAL, COST EFFECTIVE AND REVENUE NEUTRAL STIMULANT TO THE U.S. ECONOMY AND U.S. JOB CREATION, AND SHOULD NOT BE REPEALED UNDER TAX REFORM**

### **44 National, Regional and State Business and Industry Associations Submitted Comments in Support of I.R.C. Section 1031 Like-Kind Exchanges**

- American Farm Bureau Federation
- American Rental Association
- Asian American Owners Hotel Association
- Associated Equipment Distributors
- Association of Equipment Manufacturers
- Association of Manufacturing Technology
- The Real Estate Roundtable
- American Institute of Architects
- American Land Title Association
- Appraisal Institute
- Associated General Contractors of America
- Building Owners and Managers Association International
- CCIM Institute
- NAIOP, the Commercial Real Estate Development Association
- Far West Equipment Dealers Association
- Federation of Exchange Accommodators
- Iowa Farm & Land Chapter #2
- Iowa-Nebraska Equipment Dealers Association
- Iowa-Nebraska Equipment Distributors
- Iowa REALTORS® Land Institute
- Iowa Soybean Association
- International Council of Shopping Centers
- Institute of Real Estate Management
- Mid-America Equipment Retailers Association
- Minnesota-South Dakota Equipment Dealers Association
- Montana Equipment Dealers Association
- National Apartment Association
- National Association of Home Builders
- National Association of Real Estate Investment Trusts
- National Association of Manufacturers
- National Association of REALTORS®
- National Automobile Dealers Association
- National Multi Housing Council
- National Tool and Machining Association
- North American Equipment Dealers Association
- Ohio Equipment Dealers Association
- Ohio-Michigan Equipment Dealers Association
- Precision Machined Products Association
- Precision Metalforming Association
- Real Estate Board of New York
- REALTORS® Land Institute
- Society of Industrial and Office REALTORS®
- Truck Renting and Leasing Association
- U.S. Chamber of Commerce

**On November 21, 2013, the Senate Finance Committee (SFC) released a staff discussion draft ("Finance Discussion Draft") on proposed reforms to cost recovery and tax accounting rules, in which Section 1031 like-kind exchanges were targeted for repeal. On February 24, 2014, House Ways and Means Chairman Dave Camp released draft legislation to reform the tax code and Section 1031 was similarly targeted for repeal.**

**Upon release of the Finance Discussion Draft, the SFC invited comments relating to the goals of business tax reform. In response, 44 national, regional and state business and industry associations submitted comments in support of Section 1031 and/or opposing the SFC's call for repeal of IRC Section 1031 like-kind exchanges. These associations called for retention of Section 1031 because it serves as a vital and powerful stimulant of the US economy and US job creation.**

**Following is a sampling of public commentary from the 44 associations in favor of Section 1031:**

**Comments from a Joint Response by: The Real Estate Roundtable, American Institute of Architects, American Land Title Association, Appraisal Institute, Associated General Contractors of America, Building Owners and Managers Association International, CCIM Institute, Institute of Real Estate Management, International Council of Shopping Centers, the Commercial Real Estate Development Association, National Apartment Association, National Association of Home Builders, National Association of Real Estate Investment Trusts, National Association of REALTORS®, National Multi Housing Council, Real Estate Board of New York, REALTORS® Land Institute, Society of Industrial and Office REALTORS®**

"The Finance Discussion Draft would reduce the incentive to acquire, develop, own and improve real property by repealing Section 1031 of the tax code and taxpayers' ability to defer capital gain when disposing of real property... if the property is exchange for property of like-kind."

"Deferral of gain on like-kind exchange is a bedrock principle of our tax policy and nearly as old as income tax itself."

"The like-kind exchange rule survived the base-broadening reforms of 1986... Congress has largely left the like-kind exchange rules unchanged since 1924."

"The roll-over of gain on like-kind exchanges ensures a well-functioning, dynamic, and efficient U.S. real estate market... Allowing capital to flow more freely among investments is critical to facilitate commerce and support economic growth and job creation... Like-kind exchanges are particularly critical to the efficient functioning of the large and highly illiquid market for commercial and residential rental property, where the asset is capital intensive, long-lived, and past depreciation deductions greatly increase the tax burden associated with transferring ownership... By helping to get property into the right hands, rather than locking it up to defer tax indefinitely, the like-kind exchange rules facilitate job-creating property upgrades and improvements."

"Like-kind exchanges generate tax revenue for federal, state, and local governments and facilitate land conservation efforts... Like-kind exchanges result in smaller depreciation deductions for the taxpayer going forward."

"Like-kind exchanges of real estate generate significant revenue for state and local governments through conveyance, transfer, and recording taxes that are unrelated to the deferral of capital gain. Rather than generating revenue, ending deferral of like-kind exchanges of real property would likely have a chilling effect on real estate transactions, reducing state and local revenue that flows from transaction activity."

"Substituting a "similar use" concept for like-kind exchange rules would violate tax neutrality and weaken the real estate market... [A] "similar use" rule would reduce liquidity in the real estate market, make real estate development more costly, and reduce the likelihood that real property will undergo the improvements and upgrades that often occur when new owners take over the property."

**American Farm Bureau Federation:** "Like-kind exchanges are an important tool for farmers and ranchers because they provide opportunities for increased economic efficiencies. Using like-kind exchanges, active farmers and ranchers are able to combine acreage, acquire higher grade land and consolidate parcels into contiguous plots. Many older land owners look to Section 1031 as a retirement tool allowing them to sell their farm or ranch, and reinvest elsewhere without diminishing the value of their life savings. Agricultural equipment transactions are undertaken to acquire new machinery that is more technologically advanced or better suited for their operation. Without like-kind treatment, cash-strapped farmers and ranchers are more likely to defer expanding the business and to delay updating their equipment."

**U.S. Chamber of Commerce:** "The Chamber welcomes the continuing discussion on tax reform, however, has significant concerns about the Draft Proposal, which concerns are articulated below."

"The Draft Proposal repeals the like kind exchange rules on the theory that they are no longer necessary, as the new pooling regime provides for limited deferral of gain for "pooled property." However, pooled property under the new system does not include real property, which means the Draft Proposal would have the effect of completely repealing like kind exchange treatment (i.e., deferral of capital gain recognition) on exchanges of real property. Further, even if the property involved in an exchange is pooled property, deferral of gain would be limited under the new regime."

**National Association of Manufacturers:** "The NAM also opposes the proposed repeal of the like kind exchange (LKE) rules that allow taxpayers to replace property with like property, without recognizing gain. Historically, Congress has recognized the fact that, from an economic perspective, taxpayers are in the same position after the property exchange and recognition of gain is unnecessary. A number of manufacturers have captive finance arms to facilitate and support sales and leasing transactions with their customers, and in some cases, to enable sales where financing might otherwise be difficult to obtain. The captive finance arms use LKEs to reduce tax gains and thus, financing costs, enabling them to provide competitive financing for customers. The program provides dual benefits to both the lessor and the lessee. It benefits the lessor by lowering the cost of capital and the lessee with a lower lease payment. LKE helps ensure leasing is a viable, affordable option for customers. The proposed repeal of LKE would decrease cash flows and increase lending costs, which in turn decreases the ability to compete for sales and jobs in U.S. manufacturing.

**Comments from a Joint Response by: American Rental Association, Associated Equipment Distributors, Association of Equipment Manufacturers, AMT – The Association for Manufacturing Technology, Far West Equipment Dealers Association, Federation of Exchange Accommodators, Iowa-Nebraska Equipment Dealers Association, Iowa-Nebraska Equipment Distributors, Mid-America Equipment Retailers Association, Minnesota-South Dakota Equipment Dealers Association, Montana Equipment Dealers Association, National Automobile Dealers Association, National Tooling and Machining Association, North American Equipment Dealers Association, Ohio Equipment Dealers Association, Ohio-Michigan Equipment Dealers Association, Precision Machined Products Association, Precision Metalforming Association, Truck Renting and Leasing Association**

"We wish to restate objections... regarding the impact of like-kind exchange repeal... Our organizations represent companies that sell, use, rent, service, lease and manufacture construction, farm, forestry, transportation and mining equipment... We are concerned about the proposal to repeal like-kind exchange, whether independently or as part of broader tax reform. IRC Section 1031 is neither a loophole nor a tax savings vehicle, but rather a powerful economic engine that promotes capital investment, improves business productivity and creates jobs. Tax-deferred exchanges are one of the few incentives available to, and used by, taxpayers of all sizes in all sectors of the economy. The non-recognition exchange policy is premised on the "continuity of investment" and ensures that a taxpayer who continues with the same qualifying investment, with no intervening receipt of cash, is left in the same tax position as if the relinquished asset was never sold. By deferring the tax consequences associated with replacing outdated equipment, LKE helps businesses invest in newer, more efficient and more environmentally-friendly machinery."

**Associated Equipment Distributors:** "AED members are similarly concerned about the repeal of like-kind exchanges (LKE), another part of the current code that encourages capital investment. LKE is heavily used by both AED members and our customers to manage tax consequences of buying and selling equipment. Indeed, based on 2012 members tax survey and other industry research, we estimate that approximately a quarter of our members have LKE programs in place to manage their rental fleets. The tax liability associated with selling a fully depreciated asset acts as a disincentive to purchase newer, more efficient machinery. By allowing companies to defer that tax liability if they buy a new machine to replace the old, LKE frees up resources that makes the capital investment possible."

**Asian American Hotel Owners Association:** "We are convinced Section 1031 exchanges should be preserved in their current state. This provision provides tremendous benefit not only to hoteliers, but also to the communities in which our members live and work. Section 1031 exchanges allow hotel owners to have more available capital to invest in additional properties, which then increases economic development within the community, boosts the tax base and results in the creation of more jobs."

**National Association of Real Estate Investment Trusts:** "Section 1031 is at the very essence of how the commercial real estate industry creates jobs, supplies needed investment in communities, meets consumer demands and increases property values. Adding layers of taxes to a like kind exchange when the taxpayer receives no cash from the exchange would curtail these needed investments, limit promotion of conservation and could lead many investors to instead retain their current investments, leading to a "lock-up" effect that is detrimental to economic growth."

**Iowa Soybean Association:** "The Iowa Soybean Association (ISA) supports the use of 1031 exchanges. ISA President Mark Jackson, who farms near Rose Hill, said countless members have used it for land, conservation, equipment and other transactions."

**Iowa Farm & Land Chapter #2 REALTORS® Land Institute:** In a 2013 survey, the members of the Iowa Realtors Land Institute estimated that if Section 1031 were repealed, land transactions would drop by nearly 30%, with many opining that repeal would be highly negative to the Iowa and agricultural economies.



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25 YEARS AND COUNTING

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# PRESS CONCERNING SECTION 1031, THE PROSPECTS FOR ITS REPEAL, AND/OR MODIFICATION TO PROVIDE FOR A “SIMILAR USE” STANDARD:

**Sacred Cows Targeted – Tax “Simplification” Sends Ag Shivers:** “[Section 1031] mitigates terrible taxes and perpetuates land ownership... [transactions] really wouldn’t happen if someone had to pay immediate capital gains taxes because that could reduce funds for their second investment by half.” DTN/The Progressive Farmer, February 20, 2014.

**A Disconcerting Proposal from the Senate: Proposed Repeal of Section 1031:** “Repealing Code Section 1031 might well cause many real estate investors to hold property longer... which undoubtedly would slow down the pace of real estate development on a national scale.” JDSupra Business Advisor, February 10, 2014.

**Tax Reform Targets Include 1031 Property Exchanges:** Eliminating capital gains tax deferment on like-kind property would chill real estate investment markets, say critics of the Senate Finance Committee proposal. “Whoa. Don’t throw out the 1031 baby with the nasty tax code water... Without a tax deferment, many sellers won’t sell.” NewsOK, December 14, 2013.

**Unsettling Time for Real-Estate Owners and Investors:** “... Senate tax writers’ reform-bill proposals for real estate should be unsettling for anyone owning residential investment property, such as rental houses... Senate Finance Committee Chairman Max Baucus would terminate ... tax deferred exchanges under Section 1031.” The Seattle Times, December 14, 2013.

**Tax Reform Standstill Sweet and Sour for Real Estate Investors:** “Senate Finance Committee Chairman Max Baucus, D-Mont., would terminate one of the oldest financial planning techniques used by real estate investors – tax-deferred exchanges under Section 1031 of the code.” The Real Deal - New York City Real Estate News, December 13, 2013.

**Tax Reform Could Hit Real Estate Owners and Investors:** “Under Baucus’ plan, mom-and-pop real estate investors – people who’ve purchased a small portfolio of rental houses or condos – could be hit hard. Besides the depreciation deduction stretch-out, the inability to exchange properties tax-free for others of similar or greater value would put a severe crimp on their ability to grow and manage their investments over time.” The Hartford Courant, December 14, 2013.

**1031 Exchanges Benefit Farmers, Iowa:** “It’s a critical issue not on folks’ radar... If [1031] goes away, farmers will be stunned at the impact.” Iowa Soybean Association Gold Standard, June, 2013.

**A Concern that Congress Could Derail Real Estate Recovery:** “Elimination of Section 1031, which was first established in 1921, would prompt property owners to take their real estate off the market for fear of the tax consequences.” Des Moines Business Record, March 20, 2013.

**1031 Proposal ‘Backhanded’ Attempt to Cut Subsidies:** “A Senate Farm bill provision threatens to chip away at “an exceptionally farmer-friendly tax provision” in a backdoor attempt to eliminate producer subsidies...the proposal would seriously reduce the market value of affected ag land. That could “take options away from the retiring farmer” considering alternative investment possibilities.” Farm Week, January 23, 2008.

**Land Exchange Provision Could Hurt Retiring Farmers:** “A pair of ag land exchange specialists warn the American Farm Bureau Federation’s 89th annual convention of a Senate Farm bill provision that eliminates Section 1031 exchanges.” American Farm Bureau Federation, January 14, 2008.

**Tax-Deferred Exchanges of Farmland Provide Valuable Savings to Some Farmers:** “By allowing farmland owners to defer payment of taxes on capital gains – which can be significant on land that has been owned for many years – farmers who sell land and use the proceeds to purchase other property can often increase their net worth, reduce borrowing costs, and expand the size of their operations.” Amber Waves, September, 2011.



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