

WHAT PROPERTY QUALIFIES FOR IRC §1031 TREATMENT?

To qualify for a tax deferred exchange under IRC §1031 both the relinquished and the replacement properties must be held by the Exchanger for investment purposes or for “productive use in their trade or business”. The Exchanger’s purpose and intent in holding the property, rather than the type of property, is the critical issue. The use of the property by the other parties to the exchange (buyer and/or seller) is irrelevant. The following are examples of qualifying properties:

- Bare land
- Farmer’s farm
- Commercial rental
- Industrial property
- Doctor’s own office
- 30-year leasehold interest
- Percentage interest in investment property
- Residential rental

Under IRC §1031 the following properties do not qualify for exchange purposes:

- Stock in trade or other property held primarily for sale (Note: this includes property held by a developer or other dealers in property);
- Securities or other evidences of indebtedness or interest;
- Stocks, bonds, or notes;
- Certificates of trust or beneficial interests;
- Interests in a partnership (Note: the partnership can elect out of partnership status under IRC §761(a));
- Choses in action (this is a right to receive money or other personal property by judicial proceeding).

BRIEF EXCHANGES

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