

1031 Exchanges of Broadcast Spectrums

Periodically broadcast spectrums are bought and sold, sometimes as a result of an auction conducted by the Federal Communications Commission and sometimes as a result of negotiations between two broadcasters interested in repositioning assets. Since broadcast spectrums frequently increase in value, a broadcaster may experience unintended tax consequences as a result of a sale or trade. Accordingly, the use of a 1031 exchange can be very useful.

The IRS has provided opinions indicating that 1031 exchanges can be performed with regard to broadcast spectrums. This article abstracts some of the requirements and applications to defer taxes in the exchange of broadcast spectrums involving moving within or between broadcast spectrums as well as channel sharing arrangements with another broadcaster.

Moving Within or Between Broadcast Spectrum Systems

This type of transaction can occur in different ways. For example one scenario could be that the broadcaster relinquishes its UHF spectrum usage rights in exchange for an assigned frequency in the VHF spectrum plus cash. Another scenario might be that a broadcaster relinquishes usage rights in the upper portion of the VHF spectrum for rights in the lower portion of the VHF spectrum plus cash. In both of these scenarios, the broadcaster may be able to defer taxes on the gain resulting from the relinquishment of spectrum usage rights through the use of a 1031 exchange.

To qualify the requirements of section 1031 must be met. That is, the relinquished and replacement spectrums must be held for a productive use in a trade or business or for investment; the spectrums must be ‘like-kind’ to each other; the replacement spectrum must be identified within 45 days after the transfer of the relinquished spectrum; and the replacement spectrum must be acquired within 180 days after the transfer of the relinquished spectrum.

Although the IRS has opined that UHF spectrum usage rights and VHF spectrum usage rights (high and low spectrum portions) it is important to have the transaction reviewed by a competent tax advisor to determine the properties are “likekind” to each other. If the broadcaster receives cash that is not reinvested according to the requirements in other “likekind” property it will be taxable boot.

Channel Sharing

In addition to being able to use cash from the sale to purchase spectrum usage rights, a broadcaster can use the cash to obtain sharing rights in a new channel under an agreement with another broadcaster. It is important to structure such an arrangement as a cost sharing arrangement. A channel sharing agreement may be treated as a partnership for federal income tax purposes (thereby defeating the ability for tax deferral under section 1031) if there is significant joint activity by the parties. However, if the arrangement is just a cost sharing arrangement it should qualify under IRC §1031 provided the transaction meets all other 1031 requirements.