

Boot

The term boot refers to non-like-kind property received in an exchange. Usually, boot is in the form of cash, an installment note, debt relief or personal property and is valued to be the “fair market value” of the non-like-kind property received. It is important to understand that the receipt of boot does not disqualify the exchange; it merely introduces a taxable gain into the transaction. The Exchanger has a “partially Tax Deferred Exchange” rather than a “fully Tax Deferred Exchange”. Accordingly, any non-like-kind property received in an exchange will be taxed, up to the amount of realized gain from the sale of the Relinquished Property.

Some common examples of boot are:

- Cash proceeds an Exchanger takes from escrow (settlement) before the remaining proceeds are sent to the Qualified Intermediary;
- Cash proceeds received by the Exchanger, for any reason, at the closing (settlement) of the Replacement Property;
- Exchanger’s cash proceeds remaining after the exchange ends;
- Non-qualified property, such as stocks, bonds, notes or partnership interests;
- Proceeds taken from the exchange in the form of a note. An Exchanger can utilize the installment sale rules of IRC §453 to “spread out” the recognition of gain. In addition, see Exchange Topic “Seller Financing Combined with a Tax Deferred Exchange” for ways to use a Note to defer taxable gain into the Replacement Property;
- Relief from debt on the Relinquished Property caused by the assumption of a mortgage or an agreement to pay other debt which is not replaced on the Replacement Property;
- Property which is not “like-kind,” for example real property exchanged for personal property;
- Property that is intended for personal use and not for use by the Exchanger as investment or business use property (except as permitted by Revenue Procedure 2008-16). See Exchange Topic entitled “Vacation and Second Homes - Revenue Procedure 2008-16”.

To avoid having boot, the Exchanger should follow three rules:

1. Purchase Like-Kind Replacement Property of equal or greater value than the Relinquished Property (**buy equal or greater in value**);
2. Reinvest all of the net equity (exchange funds) from the sale of the Relinquished Property into the Replacement Property (**spend all of the net equity**); and
3. Obtain debt equal or greater on the Replacement Property than was paid off or assumed on the Relinquished Property (**replace the value of the debt**). Note: A reduction in debt on the Replacement Property can be offset with additional cash from the Exchanger. Stated another way, the value of the debt paid off on the Relinquished Property must be replaced with cash or debt placed on the Replacement Property.

As a practical matter, satisfying the first two rules; buying equal or greater value property **and** reinvesting all of the exchange funds, will result in the debt requirement being satisfied.