1031 Exchanges Made Easy

1031 Tax Free Strategies, LLC
1031 Exchanges

About 1031 Tax Free Strategies, LLC

1031 Tax Free Strategies, LLC has been successfully performing 1031 exchanges since 1997. Our certified staff works closely with real estate professionals and individual investors to help them successfully complete 1031 exchanges. We are fully bonded and insured. We offer a qualified escrow account administered by an independent bank. Our personal service is unparalleled in our industry, acting as a qualified intermediary in hundreds of exchanges each year. Investors are able to focus on the more important task of identifying promising assets to add to their portfolios.

Managing Member Dave Owens, CPA, CES®
A real estate accountant for 20 years, Owens is well versed in the tax code regarding IRS Section 1031. He is a member of the Federation of Exchange Accommodators (FEA) and is a designated Certified Exchange Specialist (CES®).

Chief Operating Officer Theresa Knower, CES®, CISP
Knower is a 10-year real estate veteran, specializing in 1031 exchanges since 2005. She is a well-known and respected member of South Florida real estate market professionals and favored for her excellent client service as a qualified CES® in 1031 exchanges.

1031 Tax Free Strategies has offices in Florida and Illinois, serving clients nationwide. Contact us at (239) 333.1031 or visit www.1031Company.com.

What Is a 1031 Exchange?

Internal Revenue Code 1031 (IRC 1031) allows investment property owners to defer paying potentially large tax levies in capital gains and recaptured depreciation associated with these sales. These transactions are commonly called 1031 or "like kind" exchanges and apply to nearly any investment property.

When performing an exchange, the IRS allows sellers of investment or business-use property to involve a qualified intermediary (or exchange accommodator) to use the proceeds of the sale to purchase another investment property or properties of equal or greater value.

Simplified, this means if you sell a piece of property used for investment or business purposes and purchase similar property or other real estate, you can defer all capital gains taxes. Compliance with IRS regulations governing 1031 exchanges is critical. You must understand the terms and process, and use professionals who are experts in these transactions.

Key Terms of 1031 Exchanges

- **Exchanger:** the taxpayer who is performing a 1031 exchange
- **Relinquished property:** the property the exchanger wants to sell via the 1031 exchange
- **Replacement property:** the property the exchanger wants to acquire
- **Seller:** the person who owns the property the exchanger wishes to acquire as replacement property
- **Buyer:** the person who wants to purchase the property the exchanger is selling
- **Intermediary:** the independent third party required by the IRS that acts as the middleman in both the sale and purchase of property in the exchange

Qualified Intermediary (QI)

Exchange regulations are complex. Investors are required to use a QI to facilitate these transactions. The QI may not be any agent or fiduciary of the investor (i.e., attorney, realtor, CPA, etc.). Failing to comply with key requirements can invalidate the transaction, negate the tax benefits and result in unnecessary penalties. The QI must be contacted to initiate the exchange before closing. The QI prepares the exchange agreement, escrows the proceeds, and coordinates the exchange with closing agents.

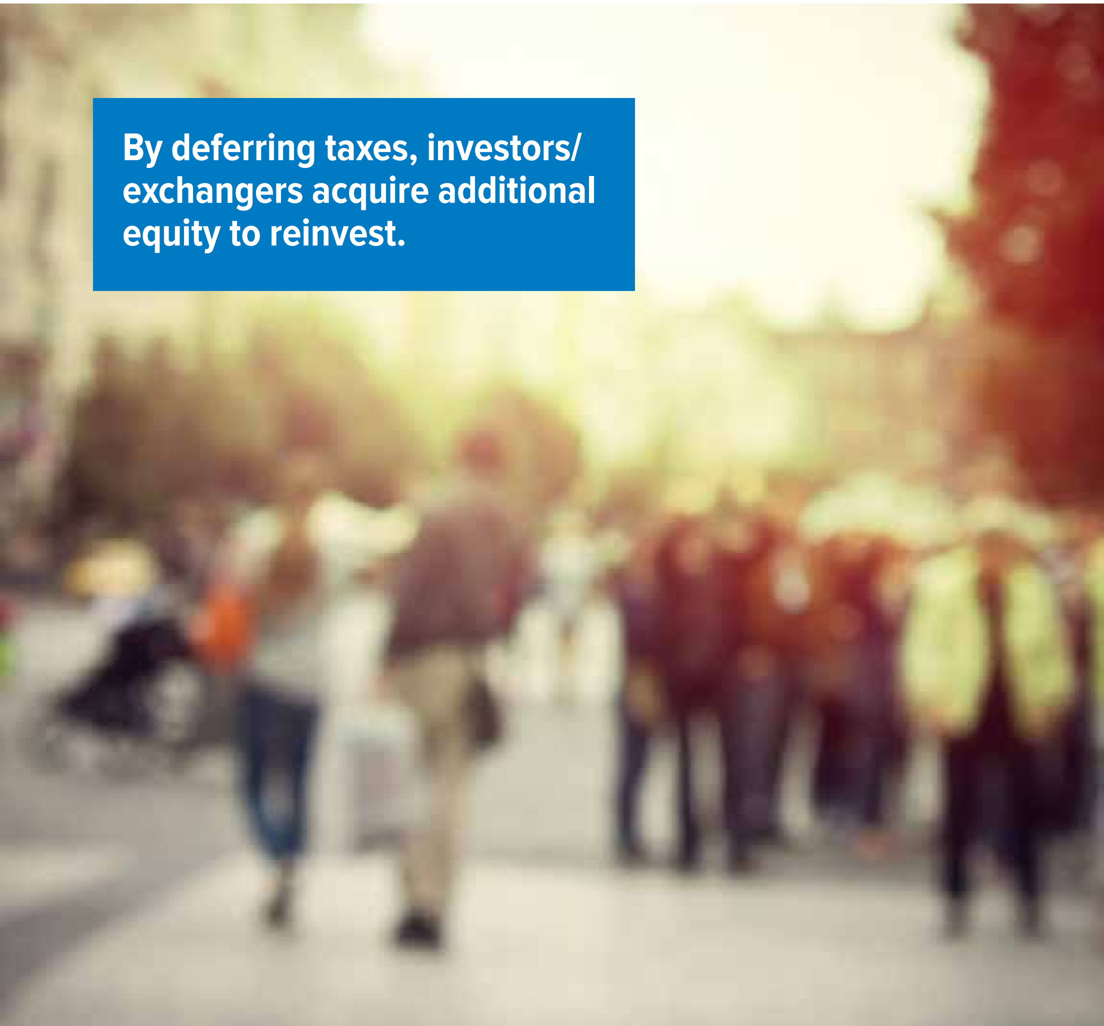
Certified Exchange Specialist (CES®)

Investors considering exchanges are advised by the Federation of Exchange Accommodators (FEA) to consult with a CES®. Referring professionals (such as realtors, attorneys, title companies or accountants) should notify their clients that using a company that employs a CES® ensures transactions adhere to the stringent IRS rules.

Why Consider a 1031 Exchange?

- **Defer and possibly eliminate federal and state taxes:** Qualifying real estate incurs no federal, state, capital gain, or income taxes on the sale of the property. These taxes include alternative minimum tax and depreciation recapture taxes.
- **Increased income potential:** You acquire the ability to build more wealth by not having to pay up to 25 percent in taxes of your hard earned gain.
- **Leverage:** You acquire the opportunity to reinvest the federal capital gains and put that money to work for yourself.

Essentially, a properly executed 1031 exchange can be considered as an interest-free loan from the IRS—one in which the principal may be increased through subsequent exchanges and that may never require repayment.



By deferring taxes, investors/ exchangers acquire additional equity to reinvest.

Rules of 1031 Exchanges

1. To defer all tax, investors must purchase a property/properties of equal or greater value than the net selling price (NSP) of the relinquished property. NSP = contract price – title fees/realtor commissions. If replacement properties are less than the NSP, you will be taxed on the difference.
2. Property must be held for business/investment use. Investors may not exchange primary or secondary homes. All other real estate qualifies. Sale property and property for purchase both require deeds (i.e., sell deed and purchase deed).
3. Investors have 180 days to complete the exchange and must close on all intended purchases within 180 days of closing on the sale.
4. Within the first 45 days of the 180-day period, investors must identify up to three possible replacement properties. Only these properties qualify for the exchange. Restrictions apply to investors who wish to identify more than three properties.
5. Investors must use a qualified intermediary to facilitate exchanges.

Property that Qualifies for a 1031 Exchange

» Property used for business
» Investment property
» Property you have rented out or used in your business
» Land can qualify if it was held for speculation

You may sell one piece of property and purchase two or more properties with the funds. The value of the replacement properties must be greater than the value of the relinquished property to defer all taxes. You can also sell multiple properties and combine the funds to purchase one replacement property.

Property that Does Not Qualify for a 1031 Exchange

» Primary residences (explained in IRC Section 121)
» Second homes with little or no rental history
» Property not intended for business or investment use

Examples and Advantages of Qualifying Real Estate

Rentals

An investor can sell vacant land and purchase residential property, such as a house or a condo. The property should be rented out for at least two years. Then, the investor can move into the property and convert it into his or her primary home. This is a terrific example of how a little proper planning can go a long way.

Owner-occupied business property

This is one of the most common 1031 exchanges. Business owners can expand company headquarters or factories by purchasing a large building to suit their needs.

Multi-family homes

Investors can sell an existing shopping center in exchange for an apartment building. Multi-family properties can be excellent investments, especially during times of low-interest rates.

Commercial property or triple net leases (TNN)

An investor can sell an existing residential rental building and roll the proceeds into a TNN, such as a commercial property. The investor, acting as landlord, collects the net rental income after the monthly mortgage payment. The advantage here is that the tenant pays all operating expenses, property taxes, utilities, insurance premiums, repairs, and maintenance. Investors looking to avoid management-intensive properties favor this option.

Tenancy in common (TIC)

This investment option allows unrelated co-owners/investors to own an undivided fee interest in a TIC property. Examples include retail centers, malls, office buildings, and other large commercial buildings that have tenants. This option requires less management than other investments may. The caveat for TICs is they provide a means of investing exactly what is needed to defer all gains. Often, it is difficult to find a replacement property with a purchase price that matches exactly what the investor wants to spend.

Condominiums and hotels

These investments are private units owned by individuals that are rented out to guests. Many investors find this option appealing, as they are able to avoid all maintenance costs involved in a traditional vacation home—but can still offer all of the amenities that come with a hotel.

Oil and gas

Many investors are unaware of the numerous oil and gas programs that are recognized as “like-kind” to all other 1031 exchange property. However, real estate ownership can include mineral rights at a fractional interest of a long-term lease. Attractive qualities of this investment include potential returns, lack of maintenance, and unwavering demand for these products.

Raw land

Many investors purchase raw (unimproved) land with the intent of building on it, whether for investment or business use. Some hold raw land for 10 to 20 years as a retirement project, while others develop the land quickly to gain income from businesses or strip malls. The options are endless with vacant land.

1031 Exchange Advantages, Misconceptions, and Successes

Key Advantages of 1031 Exchanges

Buying power
By deferring taxes, investors/exchangers acquire additional equity to reinvest.

Selling power
Exchangers do not have to inflate the selling price to cover capital gains that would normally be due upon the sale of investment property, allowing flexibility in assigning a competitive selling price.

Greater income potential
Exchangers can sell raw land and acquire income-producing property, such as a building with rentable units.

Consolidation
Owners of multiple properties can exchange them for one property that is easier to manage and potentially more profitable.

Growth effect
Investors can perform exchange after exchange, the tax liability of which is forgiven upon the death of the investor. Heirs receive the property based on the current market value of the property at the time they inherit it.

Misconceptions about 1031 Exchanges

You have to "swap" properties with the same individual.
While this was a requirement of the original IRC 1031, the IRS now allows one to sell property to someone totally unrelated to the person from whom they are purchasing the replacement property.

Only investors of large commercial properties are eligible for exchanges.
This is not true. 1031 exchanges apply to all investment properties—large and small. It works the same way for a corporation selling a large shopping center as it does for an individual selling a vacation rental property.

You have to buy something that costs more than you are selling.
This is only true if you want to defer all the capital gains taxes. You are able to purchase for less and still have some tax benefits, but will also incur tax liability regarding the difference in costs of the exchanged properties.

I can only exchange into the same type of property as the one I am selling.

Untrue. All real estate qualifies for a 1031 exchange. You can sell a vacant lot and exchange into a residential property or vice versa. You are unable to exchange your primary and secondary residences, but the other exchange possibilities are virtually endless provided the property is used for business or investment purposes. While you are unable to exchange your primary and secondary residences, the other exchange possibilities are virtually endless provided the property is used for business or investment purposes.

You will have to pay taxes sooner or later, so why bother with an exchange?

This is not necessarily true. By carefully planning and properly executing 1031 exchanges, you can avoid ever paying taxes.

1031 exchanges are complicated and not worth the trouble.

Also untrue. When you work with a competent QI, the process is simple. The QI will ensure you are aware of deadlines and that the transaction is performed in compliance with IRS regulations.

Client Success Story

The following is a real scenario of a client who performed what is considered a good 1031 exchange with us:

Sales price of rental house	$ 750,000
Less: Closing costs (commissions/title/fees)	60,000
Net sales price	690,000
Less: Basis of house sold	400,000
Potential taxable gain	290,000
Total Tax due if no exchange	48,500
Depreciation recapture (25% of $50,000)	12,500
Capital gains tax ($240,00)	36,000

The above numbers are based on taxes during the year this transaction was made. This taxpayer purchased a rental four-plex for $800,000. The purchase price of the replacement property was greater than the net selling price—therefore, the taxes due were **ZERO**.

Case Study: A Picture Perfect 1031 Exchange

AJ Smith owned a one-bedroom rental condo in a complex maintained by a management association. He wanted to upgrade to a three-bedroom unit with a view of the Gulf of Mexico. AJ sold his rental condo for $250,000 and bought a larger condo for $475,000. The mortgage on the sold property was $80,000 and the mortgage on the new one was $305,000. The $170,000 equity in the sold property was rolled into the purchase. This exchange worked well. AJ rolled existing equity into a larger and more valuable unit. The only costs incurred were transaction fees (state transfer taxes, commissions), but the tax savings through the exchange more than offset those costs.

Why was this exchange picture perfect?

- The investor purchased a property of equal or greater value to the property sold.
- The debt on the new property was equal to or greater than the debt on the sold property.
- The same amount of equity remained in the investment.

Vacation rentals qualify for 1031 exchanges if they meet the rules of Revenue Procedure 2008-16:

- Property must be rented at least two years before its sale.
- Replacement property must be rented at least two years after its purchase.
- Personal use cannot exceed 14 days or 10 percent of the days rented each year during this four-year period.

Steps for a 1031 Exchange

Transaction Flow

If you decide to do 1031 Exchanges Using Tax Free Strategies, LLC as your QI:

1. You go under contract to sell your existing property.
2. Complete the 1031 information sheet and return to us with a copy of the contract and the contact information of the closing agent handling the sale.
3. We create the exchange documents for your review and signature. We also prepare closing instructions for the title company.
4. Prior to closing on your sale, the title company sends a copy of the settlement statement to us for review. We sign the HUD, as do our clients.
5. On the day of closing, your proceeds are wired to your 1031 escrow account that we set up in your name. The funds are held in that account until you close on your replacement property. These funds can be used for a down payment.
6. You have 180 days from the relinquished property closing to complete the purchase of your replacement property. Within the first 45 days, we must have your written identification of any possible purchases you intend to make. You can identify up to three properties of any value. If you identify more than three properties, the total sum of those properties cannot exceed 200 percent of the value of the relinquished property.
7. Once you are under contract for your purchase(s), we need a copy of the contract(s) and the contact information of the closing agent. We create the remaining exchange documents for you to sign and provide instructions for the title company.
8. Once it is time to close on your purchase, we review and sign a copy of the settlement statement. After you have approved and signed the settlement statement, we wire the proceeds to the title company. When you close on all purchases, your exchange is complete.

The Security of Your Escrow Funds

When performing a 1031 exchange, one of the most important elements is that the exchanger (you, the taxpayer) cannot have access to or hold your own escrow funds. The funds must be placed in escrow by a QI, such as 1031 Tax Free Strategies.

All escrow funds held by us are placed in segregated escrow accounts for your benefit. Funds are never commingled and you have the right to verify funds at any time. These funds are never invested; they are placed into a separate money market account with an institution insured by the Federal Deposit Insurance Corporation (FDIC). Your second signature on the account can be added for additional security.

For all exchanges where the escrow is greater than $500,000, you have the option to have the funds held in a qualified escrow trust. This trust is different because the bank is hired to be the trustee of the funds to guarantee security.

There are unique rules for 1031 escrow funds. Once funds are placed into escrow, they can only be used to purchase replacement property. Should you decide not to continue with your exchange, your funds have to stay in the escrow account for at least the first 45 days. However, if you identify property your funds must stay in escrow for the remainder of the 180 days.

Allowed 1031 Exchange Expenses for Closing Costs

The following are expenses that most tax advisors/practitioners consider allowable expenses for either a sale or purchase:

- Broker's commissions
- 1031 exchange fees and/or escrow fees
- Transfer taxes (state and local)
- Recording fees, discharging fees, and lien certificates
- Professional fees, legal fees, accounting, engineering, inspection, etc.
- Certain title insurance premiums (buyer's portion)

Below are a number of expenses that most practitioners would consider non-allowable exchange expenses for the use of exchange funds, and possibly taxable:

- Fees associated with acquiring a mortgage and/or costs required by the lender
- Property tax and utility adjustments
- Prorated rental adjustments and security deposits
- Insurance payments
- Security deposits for tenants or property
- Condo fees
- Paying off credit cards

Every situation is unique and carries its own tax implications. These are merely examples intended to serve as a guide.

Seller Financing and 1031 Exchanges

If you decide to do seller financing with your relinquished property, it is important to note that the loan must be paid off prior to closing on the replacement property. When working with us, the lender would be listed as "1031 Tax Free Strategies, LLC." Any payments are made payable to "1031 Tax Free Strategies, LLC" and sent to us by the borrower for deposit into your escrow account.

In order for the full loan amount to be sheltered in the exchange, the entire loan must be paid by the borrower prior to closing on the replacement property.

There are three ways in to accomplish this:

1. The borrower pays the loan off within the 180-day exchange period AND prior to closing on the replacement property.
2. The exchanger buys the note/loan from 1031 Tax Free Strategies. For example, if the loan is $25,000 you would personally give us $25,000 to buy the note from us. An assignment is prepared to show you are now the lender. From that point on, the borrower would make payments to you directly rather than to us.
3. The exchanger finds a third party (friend, business, bank, etc.) who is willing to purchase the note. It is up to you to find the party that purchases the note. That party then gives us the funds and an assignment is prepared showing this party as the new lender.

Contract Language: Important Information for Real Estate Professionals

It is critical that all contracts involved in a 1031 exchange be assignable and reflect the intention to perform the transaction. Listed below are examples of language that can be included in the contracts for the sale and purchase.

For the sale of relinquished property—"Buyer understands this transaction is one part of a tax-deferred exchange as recognized under IRS Code Section 1031 and buyer agrees to cooperate with seller regarding this exchange. There is no additional cost to buyer and no delay to closing."

For the purchase of replacement property—"Buyer intends to perform a *tax-deferred exchange* as recognized under IRS Code Section 1031. Seller agrees to cooperate with the buyer regarding this exchange. There is no additional cost to the seller and no delay to closing."

Often, the exchange is entered into at the last minute. Therefore, the contract will not reflect language regarding the exchange. In order to ensure all necessary parties are given adequate notification of the exchanger's intent to exchange, the exchange agreement between the QI and the exchanger includes an assignment for the relinquished property and for the replacement property.

In the assignment for the relinquished property, the exchanger gives the QI the right to acquire relinquished property from the exchanger and convey it to the buyer. A copy of this assignment is provided to the buyer prior to or at closing.

The assignment for replacement property gives the QI the right to acquire the replacement property from the seller and then convey it to the exchanger. A copy of this assignment is provided to the seller prior to or at closing. These assignments serve as sufficient notification to the seller and buyer of the exchanger's intent to take part in a 1031 exchange.

The Reverse Exchange: Buy Now, Sell Later

In addition to the ability to perform a 1031 exchange—where you sell first and then you purchase—there is another type of exchange available under different circumstances.

What happens if you find the perfect replacement property before you have a buyer for your existing property? This is a common situation in which you can facilitate a reverse 1031 exchange. This exchange is geared for the investor who already knows what they want to purchase and knows that they cannot wait until their existing property sells.

Effective September 15, 2000, the IRS issued Revenue Procedure 2000-37. With this law, for the first time, the IRS sanctioned the reverse exchange with the "safe harbor" rule. Essentially, the IRS approved a parking arrangement. If a person cannot sell their property quickly enough to perform a standard 1031 exchange, they can use an exchange accommodation titleholder (EAT) to hold title on the property that the exchanger wishes to acquire.

The QI is the EAT in this transaction. The reverse exchange essentially gives the exchanger 180 days to sell existing property and exchange into the new property. The exchange does not actually take place until the relinquished property is sold and the replacement property is transferred to the exchanger.

Highlights of reverse exchanges:

- » Reverse exchanges must be completed in 180 days. The 180-day period starts on the date that the QI purchases the replacement property for the taxpayer/exchanger.
- » Within 45 days of purchasing the parked property, an identification form must be completed that specifies the relinquished property to be sold.
- » A qualified exchange accommodation agreement must be completed by the QI and by the taxpayer/exchanger.
- » The most important question to ask is how the replacement property will be paid for. Even though the exchange accommodation titleholder is buying the property, the client pays for the property by cash purchase or by financing. Financing rules have changed over the past few years, so it is important the banker is informed of this transaction in advance.
- » While the EAT owns the property, the exchanger does have complete access to the property and is allowed remodel, repair or rent the property. Exchangers are responsible for expenses of the new property including insurance and real estate taxes.
- » Reverse exchanges are popular and not as difficult as they may sound. The only downside is that if the exchanger does not sell the relinquished property within 180 days, they will not be allowed to do the exchange on the specified properties. Therefore, it is important during a reverse exchange that the exchanger is serious about selling the relinquished property and that it is priced according to the market.

Additional Questions, Considerations, and Resources

Frequently Asked Questions

Can I avoid paying taxes forever?

Yes! Simply follow 1031 exchange rules every time you sell one or more properties and buy replacement properties. When you die, your estate forever escapes all capital gains taxes.

Can I get money out of the exchange tax-free?

Yes. Complete your exchange first and after closing there is the opportunity to refinance the new property. It is critical that you wait until the exchange is complete before you begin the process of refinancing.

Can I hold a partial loan on the property I am selling and still have a tax-free exchange?

Yes. If payments come to you they are taxed as you receive them, on an installment sale basis. The balance of your equity is exchanged tax-free. If you want the loan payments to be part of the exchange, payments are made directly to the QI. You want to ensure the loan is paid in full within 180 days and prior to closing on your replacement property if you want those funds to be part of the exchange. Any portion that is not paid within 180 days is not considered part of the 1031 exchange and is subject to tax.

Can I pay for my 1031 exchange out of my sales proceeds?

Yes. Your exchange fees can be paid out of relinquished property proceeds.

If I close on my relinquished property without a QI can I still do a 1031 exchange?

No. You must hire a QI in advance of closing on the relinquished property.

How Do You Get Started?

This guide has outlined all the information you need to know to become more familiar with the 1031 exchange process. You are not expected to be an expert; that's our job! We just want you to have a better understanding so you can make informed decisions.

Important Considerations

Here are some key things to keep in mind when considering a 1031 exchange:

1. Consult with a CPA or tax advisor. They know better than anyone whether or not an exchange is the best choice for you. Qualified intermediaries cannot provide any legal or tax advice. Our role is to facilitate the exchange. Therefore, it is important you keep all necessary members of your financial team in the loop.
2. Whether or not you choose 1031 Tax Free Strategies, make sure the QI you do choose has taken the proper security measures with your escrow funds.

3. It is never too early to start the process. While we can do exchanges at the last minute, having everything in place in advance makes it easier on all parties handling the transaction.
4. Once you are ready to proceed, we send you a client information sheet to complete. You fax this to us with a copy of the contract(s). We take it from there, guiding our clients every step of the way. We make the exchange process as simple as possible for our clients.

Additional Resources

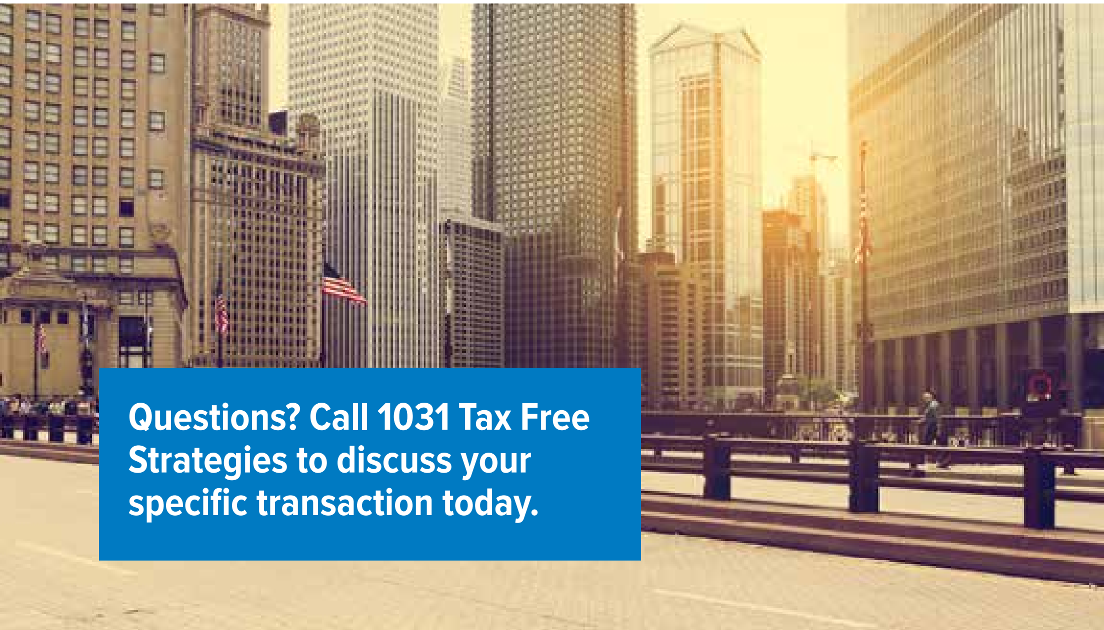
Important forms/publications to know:

» IRS Form 8824 – IRS form for reporting like kind exchanges
» IRS Form 4797 – IRS form for sales of business property
» IRS Schedule E (Form 1040) – IRS forms for reporting supplemental income and loss

IRS Foreign Investment in Real Property Tax Act (FIRPTA) forms:

» IRS Publication 515
» IRS Form W-7
» IRS Form SS-4
» IRS Form 8288-B

All of these forms (and much more) can be downloaded from the IRS website at www.irs.gov.



Questions? Call 1031 Tax Free Strategies to discuss your specific transaction today.

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