



The Voice of the 1031 Industry

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I.R.C. SECTION 1031 AGRICULTURE BASED TRANSACTIONS Commentary and Examples of Benefits

Commentary

Higher Tax Rates Dramatically Increase the Benefit of Section 1031 for Farmers and Ranchers

With the expiration of the Bush tax cuts at the end of 2012, federal capital gains tax rates total 25% for the highest earners after factoring in the 3.8% Medicare surcharge and the 1.2% phase out of itemized deductions. State income taxes may range from 5% to in excess of 10%. Accordingly, total tax from sales of highly appreciated farm and ranch assets often exceed 30%. Furthermore, recapture rates for depreciable assets often exceed 40%. With significantly higher capital gains tax rates, Section 1031 has become an indispensable tool for all owners of capital assets, specifically including farmers and ranchers.

Statistics from Professionals Engaged in the Industry Demonstrate that Section 1031 Exchanges of Farmland are Routinely Undertaken by Farmers and Ranchers

Internal statistics and observations from Federation of Exchange Accommodators ("FEA") members operating primarily in agricultural based markets show that with few exceptions, farmers and ranchers overwhelmingly exchange into similar farm or ranch assets. Conversely, non-farmland property owners predominantly choose to exchange into non-agricultural properties. In comparison to the full universe of exchange transactions, exchanges out of transitional development land into farm or ranch assets are isolated.

Section 1031 is not an unfair tax break for the wealthy or large land owners. On the contrary, it is one of the few incentives available to and used by taxpayers of all sizes. A recent industry survey showed that 60% of exchanges involve properties worth less than \$1 million, and more than a third are worth less than \$500,000.

Academic and noted opinion leaders have stated in multiple instances that limits to §1031 will have a dramatic, negative impact on the agricultural community as a whole.

Academic Studies Have Demonstrated that Section 1031 Decreases Land Values by Stimulating Sales and thus Increasing Supply of Land for Sale

Prior to the recent economic crisis, there was a prevalent myth among stakeholders in rural communities that recent growth in farmland values may have, in part, been stimulated by Section 1031 exchanges of farmland. A 2010 Texas A&M Economics Department study focusing on economic supply side and demand factors found that Section 1031 actually decreases market prices of agricultural land because land owners are more willing to sell properties, given their ability to defer tax. Without the deferral benefit agricultural owners would be less likely to sell for fear of lost capital through taxes. This finding was

substantiated by an Iowa Realtor's Land Institute survey where land professionals predicted a 30% reduction of land available for sale if Section 1031 were repealed.

Elimination of Section 1031 would have a Significant Negative Impact on Rural Communities and Economies

Section 1031 provides significant benefits to owners of farm and ranch land providing them with flexibility and increased economic efficiencies. The “spillover” and “trickle down” economic stimulus effects on a myriad of agriculture related industries, including REALTORS®, contractors, title insurers, lenders, equipment dealers/manufacturers and livestock producers, are substantial. The repeal or restriction of §1031 would have a dramatic, negative impact on the agricultural community as a whole. Given the extraordinary connection between the value of farmland and farmers' economic well-being, any policy changes that may hurt farmers and those involved in the agricultural industry should be avoided.

Section 1031 Stimulates the Agricultural and General Economy as Demonstrated by Standing the Tests of Tax Reform Proposals since its Enactment in 1921

Section 1031 budget scoring has demonstrated that elimination of Section 1031 would have a minimal impact on deficit reduction. Further, its elimination could actually have a negative impact as a result of diminished economic activity. Economic policy efforts today focus on encouraging investment in productive assets, encouraging additional borrowing by qualified investors, increasing the velocity of transactions, redeploying underutilized or idle assets, and discouraging fearful contraction and cash hoarding. Section 1031 encourages just this type of growth by mandating reinvestment in like-kind assets, increasing ordinary income from additional investment in higher value assets and job growth, discouraging the hoarding of capital and penalizing profit taking by taxing value taken out of the economy. Section 1031 not only encourages reinvestment over profit taking, it provides a strong incentive to keep that investment at home, in the United States. Eliminating or restricting §1031 would not make a meaningful impact upon tax reform or tax simplification, and would do substantially more harm than good.

Examples

Example 1: Combining Acres and/or Exchanging into Higher Grade Farms

Facts: A farmer owned two 80 acre tracts of farmland located 20 miles away from his home operation. Farmer's neighbor listed for sale a 160 acre, higher quality tract adjoining the farmer's “home farm.” Through a like-kind exchange, the farmer was able to divest the two distantly located 80 acre parcels, acquire the neighboring 160 acre tract, and combine his land holdings into a larger farm of 360 contiguous acres.

Impact: The like-kind exchange allowed the farmer to exchange into the new farm without reducing his purchasing power, and provided him with the ability to combine his acres, increase operational efficiencies and add to the original family farm.

Conclusion: Section 1031 promotes reallocations of capital to higher quality assets and results in greater operational efficiencies.

Example 2: Keeping the Farm/Ranch in the Family – The Beginning Farmer

Facts: A 65 year old farmer owned an 80 acre farm that had been in the family for decades. When farmer acquired the farm, land prices were much lower. Farmer's son was a beginning farmer, starting his operation, and he desired to acquire the ancestral farm. Farmer sold the family farm to his son and was able to exchange into a larger, higher quality parcel located near another separate tract of farmland.

Impact: The like-kind exchange allowed farmer help his son start his farming operation while passing the family farm on to the next generation. Farmer was able to sell the property to his son without being "tax locked" due to the fear of severe tax ramifications if gain had not been deferred under Section 1031.

Conclusion: Section 1031 promotes and incentivizes transitions of farmland assets to new and beginning farmers.

Example 3: Keeping the Farm/Ranch in the Family – Sibling Acquisitions Stepped-Up Basis for Heirs

Facts: Five siblings inherited an undivided one half interest in two 600 acre tracts of ranchland (Tract A and Tract B) when their mother passed away in the 1990s, subject to a life estate with father. Father passed away in 2013 leaving the remaining undivided half to the siblings. All of the siblings were left with equivalent tax consequences in the event of a sale. Two of the siblings continued to raise cattle on the tracts while three lived in other parts of the country. The siblings decided to sell Tract A at auction with the winning bidder agreeing to lease Tract A to the rancher siblings. The three non-ranching siblings agreed to sell their interests in Tract B, the "home ranch" to the rancher brothers to keep it in the family. One of the non-ranching siblings cashed out of her interest and the other two siblings exchanged into income producing properties in their cities of residence.

Impact #1: The like-kind exchange allowed the two rancher siblings to keep the "home ranch" in the family. At the same time Section 1031 incentivized the non-farming siblings to sell without fear of being "tax locked" and reinvest in assets where they live that more appropriately met their investment goals.

Impact #2: Mother and father acquired the two 600 acre tracts of ranchland by buying and exchanging out of smaller tracts of land over the years they operated the ranch. Section 1031 allows for the continuous deferral of gain on assets where no cash-out event occurs. Upon death, heirs inherit the property with a stepped-up basis.

Conclusion: Section 1031 promotes and incentivizes transitions of farm and ranch assets to those who know and work the land for their livelihoods. Fifty-five percent of land in many states is owned by farmers and ranchers 65 year or older. This scenario occurs with significant regularity and will occur in increasing frequencies as nearly two-thirds of farm/ranch assets in many states pass to the next generation over the next 20 years. Further, Section 1031 preserves asset values for heirs.

Example 4: Retirement Planning

Facts: A farming couple owned 1,000 acres of farmland and operated a 150 head dairy operation. The couple had three adult children all living and working in or near the capitol city in their state. None of the children desired to return to operate the dairy operation. The farming couple expected to retire from the farm in five years. Upon retiring, the couple desired to sell their dairy operation and reside near their children and grandchildren. Toward this end, the couple sold off 100 acres of their farm and exchanged into a rental condominium unit in the capitol city. Upon retiring five years later, the couple would be permitted under tax law to convert the previously income producing property into either their second home or their primary personal residence. The couple will retain the remaining 900 acres of farmland and receive an ongoing retirement income stream by renting the acres to a tenant farmer.

Impact: The like-kind exchange allowed the farming couple to plan for retirement and relocation near their family by exchanging into a different non-farm asset without reducing the value of their nest egg earned through their lifetimes of hard work.

Conclusion: Section 1031 serves as a flexible retirement planning tool for farmers and ranchers.

Example 5: Diversification of Asset Type

Facts: Farmer built a 2,000 acre farmland asset base over the last 15 years with average values appreciating from \$1,000 per acre to \$8,000 per acre. With farmland values approaching all-time highs, farmer determined it was wise to diversify his portfolio and exchange into depressed commercial assets nearby. Farmer sold a portion of his farmland and exchanged into a storage unit facility, an apartment complex and a retail strip center.

Impact: Section 1031 allows for exchanges into any real property held for investment or used in a trade or business. Accordingly, farmer was able to exchange into a depressed commercial investment and hedge predicted downside risk to farmland asset values by exchanging into a more diverse real estate portfolio.

Conclusion: Section 1031 serves as a diversification and risk-hedging tool for all real property investors, including farmers and ranchers.

Example 6: Relocating Farm/Ranch and Livestock Operations Keeping Investment Dollars in the U.S.

Facts: An Amish couple owned 80 acres, a livestock operation and their homestead in a community in their home state and were relocating to an Amish community in another state. The couple exchanged out of the land and buildings on their current farm into a comparably priced farm/ranch operation in the new community. Further, the couple exchanged out of their current breeding stock into like-kind breeding stock on their new farm.

Impact: Section 1031 allowed the Amish couple to pursue their life plans and wholly continue their farm/ranch activities in their new community without diminishing their purchasing power or ability to earn a comparable living.

Conclusion: Property owners can relocate their investment assets, without fear of tax ramifications, to different locations suiting their needs. Section 1031 allows for exchanges of investment or business-use property in the United States for other investment or business-use property in the U.S. Domestic property cannot be exchanged for foreign property. Section 1031 incentivizes and promotes investment within the U.S.

Example 7: Improvements to the Farm/Cattle Operation

Facts: Farmer owned a 1,000 acre farm with a 500 head cattle feeding operation with buildings constructed in the 1970s. Farmer received an offer to sell the cattle feeding operation and surrounding 160 acres for \$1,200,000. Farmer sold the operation and surrounding acreage and exchanged into a bare 160 acre tract worth \$800,000 that was closer to the balance of his land holdings. Farmer utilized an exchange accommodator to construct a new cattle feeding operation, including buildings and grain storage with a completed value of \$600,000. Upon completion of the improvements, the exchange accommodator transferred the \$1,400,000 improved property and surrounding acres to farmer.

Impact: Section 1031 allowed the farmer to exchange into land and newly constructed improvements so that he could continue farming operations in a modern and more efficient facility without eroding his investment through recognition of more than \$400,000 of gain.

Conclusion: Section 1031 provides maximum flexibility to exchangers by allowing them to exchange into not only land, but improvements, without erosion of capital investment.

Example 8: Promotion of Conservation

Facts: Farmer owned 80 acres of environmentally sensitive converted wetlands that had been row cropped. A watershed improvement district offered to buy a permanent conservation easement from farmer whereby the land would be restored to wetlands toward the end goal of improving downstream water quality. Farmer exchanged out of the permanent conservation easement into non-environmentally sensitive crop land.

Impact: Section 1031 facilitated and promoted the farmer's participation in the conservation program and allowed an exchange into less environmentally sensitive acres, all while preserving his asset and earning base.

Conclusion: Section 1031 incentivizes participation in conservation programs designed to improve water quality, reduce soil erosion and bolster wildlife habitat.

Example 9: Upgrading Agricultural Equipment

Facts: Farmer recently acquired additional acres necessitating the purchase of a new combine valued at \$550,000. In order to fund the purchase of the new machinery, the farmer sold his fully depreciated (under current rules) combine for \$250,000, structuring the transaction as a like-kind exchange.

Under present MACRS depreciation rules, the replacement equipment's \$300,000 taxable basis would be depreciated over 7 years, providing additional benefit to the farmer.

However, under the 11/21/13 Senate Finance Committee Discussion Draft proposal for depreciation pools, the new combine, a "Depreciation Pool 2" asset, would have a substantially longer depreciation schedule. The proposal would permit depreciation of only 18% of the declining balance per year, resulting in a quadrupled 30 year effective depreciation schedule, creating a negative cash flow impact to the farmer.

Impact: By structuring the transaction as a §1031 exchange, the farmer was able to upgrade his equipment without penalty or any reduction in purchasing power. Without a §1031 tax deferral, the farmer's net (after tax) capital available for investment into the replacement equipment would have been reduced by up to \$100,000*.

Conclusion: Like-kind exchanges of agricultural equipment encourage investment by farmers and ranchers in new assets that are more technologically advanced or better suited to their operation. The current MACRS depreciation rules allow for the benefits of depreciation to be recognized more quickly, generating cash to fund farming operations. The proposal for depreciation pools creates much longer depreciation schedules, effectively slowing down that important cash flow, and serving as a disincentive to upgrade or replace equipment. The draft proposal will also create an unfair burden to individual farmers and ranchers, who will be burdened with a slower depreciation schedule coupled with an individual tax rate likely higher than the targeted 25% corporate rate.

*The \$100,000 tax liability assumes a combined (federal and state) tax rate of 40% applied against the \$250,000 sale price of the fully depreciated equipment.