

THE LIKE-KIND EXCHANGE COALITION

August 1, 2016

Ms. Barbara Angus
Chief Tax Counsel
U.S. House of Representatives
Committee on Ways and Means
1136 Longworth House Office Building
Washington, DC 20515

Dear Ms. Angus:

As the House Ways and Means Committee considers ways to create jobs, grow the economy, and raise wages through tax reform, we strongly urge that current law be retained regarding like-kind exchanges under section 1031 of the Internal Revenue Code (“Code”). We further encourage retention of the current unlimited amount of gain deferral.

Like-kind exchanges are integral to the efficient operation and ongoing vitality of thousands of American businesses, which in turn strengthen the U.S. economy and create jobs. Like-kind exchanges allow taxpayers to exchange investment and business property for like-kind property, to diversify or consolidate holdings, and to transition to meet changing business needs. Specifically, section 1031 provides that investors and firms do not immediately recognize a gain or loss when they exchange assets for “like-kind” property that will be held for investment or used in their trade or business. They do immediately recognize gain, however, to the extent that cash or other “boot” is received. Importantly, like-kind exchanges are similar to other non-recognition and tax deferral provisions in the Code because they result in no change to the economic position of the taxpayer.

Since 1921, like-kind exchanges have encouraged capital investment in the United States by allowing funds to be reinvested in the enterprise, which is the very reason section 1031 was enacted in the first place. These investments not only benefit the companies making the like-kind exchanges, but also suppliers, manufacturers, and others facilitating them. Like-kind exchanges ensure both the best use of real estate and a new and used personal property market that significantly benefits start-ups and small businesses. Eliminating like-kind exchanges or restricting their use would have a contraction effect on our economy by increasing the cost of capital, slowing the rate of investment, increasing asset holding periods and reducing transactional activity.

A recent macroeconomic analysis by Ernst & Young found that either repeal or limitations of like-kind exchanges could lead to a decline in U.S. GDP of up to \$13.1 billion annually.¹ The

¹ *Economic Impact of Repealing Like-Kind Exchange Rules*, ERNST & YOUNG (March 2015, Revised November 2015), at (iii), available at

Ernst & Young study quantified the benefit of like-kind exchanges to the U.S. economy by recognizing that the exchange transaction is a catalyst for a broad stream of economic activity involving businesses and service providers that are ancillary to the exchange transaction, such as brokers, appraisers, insurers, lenders, contractors, manufacturers, etc.

Companies in a wide range of industries, business structures, and sizes rely on the like-kind exchange provision of the Code. These businesses—which include real estate, construction, agricultural, transportation, farm / heavy equipment / vehicle rental, leasing and manufacturing—provide essential products and services to U.S. consumers and are an integral part of our economy.

A microeconomic study by researchers at the University of Florida and Syracuse University, focused on commercial real estate, concluded that without like-kind exchanges, businesses and entrepreneurs would have less incentive and ability to make real estate and other capital investments.² The immediate recognition of a gain upon the disposition of property being replaced would impair cash flow and could make it uneconomical to replace that asset. This study further found that taxpayers engaged in a like-kind exchange make significantly greater investments in replacement property than non-exchanging buyers.

Both studies assert that jobs are created through the greater investment, capital expenditures and transactional velocity that are associated with exchange properties. A \$1 million limitation of gain deferral per year, as proposed by the Obama Administration³, would be particularly harmful to the economic stream generated by like-kind exchanges of commercial real estate, agricultural land, and vehicle / equipment leasing. These properties and businesses generate substantial gains due to the size and value of the properties or the volume of depreciated assets that are exchanged. A limitation on deferral would have the same negative impacts as repeal of Section 1031 on these larger exchanges. Transfers of large shopping centers, office complexes or hotel properties generate economic activity and taxable revenue for architects, brokers, leasing agents, contractors, decorators, suppliers, attorneys, accountants, title and property / casualty insurers, marketing agents, appraisers, surveyors, lenders, exchange facilitators and more. Similarly, high volume equipment rental and leasing provides jobs for rental and leasing agents, dealers, manufacturers, after-market outfitters, banks, servicing agents, and provides inventories of affordable used assets for small businesses and taxpayers of modest means. Turnover of assets is key to all of this economic activity.

In summary, there is strong economic rationale, supported by recent analytical research, for the like-kind exchange provision's nearly 100-year existence in the Code. Limitation or repeal of section 1031 would deter and, in many cases, prohibit continued and new real estate and capital investment. These adverse effects on the U.S. economy would likely not be offset by lower tax rates. Finally, like-kind exchanges promote uniformly agreed upon tax reform goals such as

<http://www.1031taxreform.com/wp-content/uploads/Ling-Petrova-Economic-Impact-of-Repealing-or-Limiting-Section-1031-in-Real-Estate.pdf>.

² David Ling and Milena Petrova, *The Economic Impact of Repealing or limiting Section 1031 Like-Kind Exchanges in Real Estate* (March 2015, revised June 2015), at 5, available at <http://www.1031taxreform.com/wp-content/uploads/Ling-Petrova-Economic-Impact-of-Repealing-or-Limiting-Section-1031-in-Real-Estate.pdf>.

³ *General Explanations of the Administration's Fiscal Year 2017 Revenue Proposals*, at 107, available at <https://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2017.pdf>.

economic growth, job creation and increased competitiveness.

Thank you for your consideration of this important matter.

Sincerely,

ACCA - The Indoor Environment & Energy Association
American Car Rental Association
American Farm Bureau Federation
American Trucking Associations
American Truck Dealers
Asian American Hotel Owners Association
Associated Equipment Distributors
Associated General Contractors of America
CCIM Institute
C.R. England, Inc.
Federation of Exchange Accommodators
Institute of Real Estate Management
National Apartment Association
National Association of REALTORS®
National Association of Real Estate Investment Trusts
National Automobile Dealers Association
National Business Aviation Association
National Multifamily Housing Council
National Stone Sand and Gravel Association
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Real Estate Roundtable
REALTORS® Land Institute
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