

Like-Kind Exchange Corner

By Stan Freeman and Louis S. Weller

Best Practices in Code Sec. 1031 Art Exchanges

Introduction

Code Sec. 1031 has been used, albeit inconsistently, for years by savvy owners of fine art to preserve capital by deferring the gain on the sale of appreciated artworks. Motivation to use Code Sec. 1031 has recently intensified due to:

- a very active market that is driving prices higher by way of increased competition
- higher tax rates on gain, with the new 3.8-percent tax on net investment income¹ in effect and ever-hungrier local taxing authorities seeking to collect sales and use taxes
- low interest rates for investors using leverage to buy or refinance after the fact

Similar motivations exist in the current real estate arena and we believe that use of Code Sec. 1031 to defer gains in real estate has increased sharply in the last year as a result. For real estate owners, the applicability of Code Sec. 1031 is widely understood. Various service providers (primarily accommodation companies linked to title insurance companies and banks, as well as independent companies) operate according to a combination of statutes and accepted best practices that in most cases give real estate owners a high degree of confidence in both the feasibility and outcome of Code Sec. 1031 exchanges.

Art held for investment is not excluded from Code Sec. 1031 treatment, but in contrast to real estate, there are many important aspects of exchanging artworks that remain murky. Lack of clarity in these areas creates risk and uncertainty that frequently inhibits strategic and safe application of Code Sec. 1031 to these assets. Unlike real estate, the art world



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has a transactional culture that has little regulatory oversight of the various participants and functions frequently on the basis of reputation and trust. When this culture fails, the results can be devastating. Furthermore, the development of coherent answers to important frequently asked questions regarding exchanges of artworks seems uninteresting to many of the usual participants in these transactions and remains largely neglected.

This column addresses several of these questions. As asset classes, real estate and artworks have some important conceptual commonalities that are applicable to Code Sec. 1031 questions. As a result, in much of the ensuing discussion, we suggest parallels to best practices that are widely used by real estate owners and the various service providers that support them. In making suggestions for “artwork exchange best practices,” our objectives are to stay consistent with published authority, support full financial optimization for the art owner (as opposed, for example, to what might be optimal for exchange accommodation parties or other participants in the art world, such as dealers) and have very low risk of failure.

The aspects of artwork exchanges that we address here relate to two categories: technical Code Sec. 1031 requirements and practical aspects of implementing artwork exchanges under existing rules. There are two major issues in each category:

- Code Sec. 1031 Qualification Requirements:
 - Qualified Use: Investor or collector?
 - Like-Kind Issues: What can be exchanged for what?
- Implementation:
 - Forward or Reverse: Which is the optimal form of Code Sec. 1031 artwork exchange?
 - Choosing a QI or EAT: What criteria should be used?

Brief Recap of Relevant Code Sec. 1031 Principles

Code Sec. 1031 allows for nonrecognition of gain on the sale of assets held for trade or business or investment purposes. Since artwork will almost never be income producing on a current basis,² the “held for investment” criteria will generally serve as a basis for application of the section to a disposition/acquisition transaction. Because exchanges where two parties simultaneously swap assets are not common, most exchanges are undertaken as deferred exchanges under the umbrella of Code Sec. 1031(a)(3), utilizing

a “qualified intermediary,” or “QI,” to receive, hold and spend relinquished art sale proceeds pursuant to the regulations’ constructive receipt safe harbor.³ The standard deferred or “forward” exchange occurs when relinquished property is sold prior to the acquisition of replacement property. In addition to providing expertise on exchange rules and strategies, the role of the QI during the process of a deferred exchange can be summarized as:

- accept an assignment of the property owner’s (*i.e.*, owner’s) rights in its sale agreement with the buyer of the relinquished property;
- convey (or cause the owner to convey) title to the relinquished property to the buyer;
- holding the cash proceeds of the sale of the relinquished property;
- accept the 45-day identification of potential replacement property provided by the owner;
- accept an assignment of the owner’s right in its purchase agreement with the seller of qualifying replacement property;
- supply the cash proceeds from the relinquished property sale to fund purchase of the replacement property;
- convey (or cause the seller to convey) title to the replacement property to the owner; and
- create documentation of the entire transaction on behalf of the owner.

A “reverse” exchange is used when the replacement property will or must be acquired prior to the sale of relinquished property. The IRS has provided guidance for several forms of “safe-harbor” reverse exchanges in IRS Rev. Proc. 2000-37 (as amended),⁴ utilizing ownership accommodation arrangements that are available through a subset of the QI community.

The role of the accommodation party (referred to as the “Exchange Accommodation Titleholder” or “EAT” in the context of a reverse exchange under Rev. Proc. 2000-37) for the most common form of reverse exchange (known as “Exchange Last,” since the actual exchange of property occurs at the end of the accommodation arrangement) can be summarized as:

- accept an assignment of the owner’s right in its purchase agreement with the seller of the replacement property;
- hold title to the replacement property during the maximum 180-day period allowed by the Revenue Procedure;
- accept the 45-day identification of potential relinquished property provided by the owner;

- accept an assignment of the owner's rights in its sale agreement with the buyer of qualifying relinquished property;
- convey title to the replacement property to the owner pursuant to a "simultaneous" Code Sec. 1031 exchange, in which the owner sells relinquished property to a buyer utilizing services of a QI (who can be, but is generally not, the EAT but is sometimes the EAT's parent) and acquires replacement property from the EAT; and
- document the entire transaction on behalf of the owner.

Every year, there are many thousands of successful delayed and reverse exchanges involving real estate, tangible personal property (both depreciable and nondepreciable) and intangible assets.

Qualified Use—Collector, Dealer or Investor?

Meeting the "qualified use" requirement for Code Sec. 1031 exchanges of artworks means that an artwork owner must treat artworks as assets being held for investment or income, rather than merely as additions to a personal collection where the intent is limited to deriving pleasure through possession and display or as assets held as inventory or otherwise for sale. This is widely referred to as the "qualified use" requirement and applies to property transferred and received in a Code Sec. 1031 exchange. For sellers of collected art, the question will normally be whether relinquished and replacement art is considered held primarily for investment rather than for personal purposes. If the seller is considered a dealer, holding art for sale to customers in the ordinary course of business, Code Sec. 1031 will not be available for works leaving or entering inventory but may still be available for long-term hold pieces. We do not deal in this article with the manner in which art dealers might qualify certain pieces for Code Sec. 1031 tax deferral.

It has been said that artworks which are displayed in the owner's personal residence have questionable status as investments. An example of a judicial conclusion to this effect is found in *D.S. Blodgett*, where a claimed loss on the transfer of art was disallowed.⁵ The case makes clear, however, that this is not necessarily the result. The relevant questions are whether the art owner acted like an investor with respect to a specific piece, exhibiting behavior such as gaining education in the invest-

ment characteristics of art, maintaining records of investment value on an ongoing basis and having a history of art investing. It is permissible to derive personal *pleasure* from ownership of an investment asset, but that must be a *secondary* intent of the acquisition and ownership.

In the real estate context, this question most often arises with vacation-use properties. In this category, the most important factor determining Code Sec. 1031 qualification seems to be the degree of effort (and success) spent in renting a property compared to the amount of personal use.⁶ As with real estate, there are various strategic and operational measures that indicate investment intent relating to artworks. Since artworks generally are not depreciable, do not generate rental income and are not used in the various other ways that businesses use real estate, an owner must be able to demonstrate that the primary intent of acquiring and holding artworks is to sell them later for a price that is higher than the original purchase price plus the cost of ownership. While the storage strategy for collectables is clearly an indicator of intent, there can be many other indicators, and it is the overall strategy that can become compelling, no matter how much time the artworks spend in the owner's personal residence. Although the IRS will base its determination of primary investment intent on all the facts and circumstances affecting a particular owner, if some or all of the following strategies are implemented, the owner should be in a strong position to satisfy the qualified use requirement:

Investment Strategies

- Develop a business plan that describes a fine art investment strategy, and then conduct affairs related to the investments in a business-like manner to actualize the investment intent;
- focus acquisitions on specific themes—e.g., artist groups, mediums, time periods;
- develop expertise in one or more themes, consult with other experts, publish articles discussing some aspect of the investments; and
- display art periodically in venues that promote the theme, thereby increasing the demand for works that are part of the theme.

Asset Value Protection Strategies

- Obtain independent valuation, confirmation of authenticity and title insurance for new acquisitions to establish their value and increase the ability to sell later at a profit;

- own assets in a special purpose entity to show separation of assets and isolation of risk; and
- obtain damage and theft insurance policies that are separate from the owner's residential policy and provide protection no matter where the assets are stored or displayed.

Financial and Operational Strategies

- Be able to show strategic transaction flow, profits and losses, the total cost of ownership and operations to show the results/returns from the investments;
- keep fastidious records of transactions, appraisals and comparable transactions involving similar works by other owners to understand the present equity in the investment;
- use credit facilities to make investment acquisitions that are separate from credit facilities used for other, noninvestment purposes;
- take (initial) delivery in a location other than the owner's primary personal residence; and
- when a sale is planned, display or store art at a location other than the owner's personal residence and ship to the buyer from that location.

While no single strategy is foolproof, the courts have concluded in the past that artwork maintained in a residence can still qualify as held for business purposes and that home display is not a dispositive negative factor where investment intent can be otherwise demonstrated.⁷

Like-Kind Determinations

There is no definitive guidance on how the "like-kind" standard of Code Sec. 1031 applies to artwork. There is no like-class system similar to that for depreciable personal property. Virtually the only published authority related to the subject was issued by the IRS in 1981, when it was asked to rule whether a collection of lithographs destroyed in a fire could be replaced under Code Sec. 1033(a)'s "similar or related in service or use" rule by paintings, sculptures and serigraphs and other works of art. In Letter Ruling 8127089, the IRS reached the conclusion that proposed replacement properties did not meet the "similar or related in service or use" test but provided no rationale or reasoning to support the conclusion.⁸ We have no way of knowing whether the IRS would reach the same conclusion today and, of course, 30-year-old letter rulings must be taken with a grain of salt. However, in light of this published position, the most conservative

approach is to utilize a very narrow like-kind standard for artworks in terms of medium, which suggests that only oil paintings can be exchanged for oil paintings, sculpture for other sculpture, lithographs for other lithographs and so on. One might even go so far as to restrict the standard to works in the same medium by the same artist.

If applied to define application of Code Sec. 1031's like-kind standard to art, such a medium-based, hyper-conservative approach provides a framework that in our view unreasonably limits the number of exchanges that can be successfully accomplished. We also believe that approach is inconsistent with the fundamental principle applicable to the like-kind standard: that property be of the same "nature and character" and that differences in "grade or quality" do not matter. Fine art of various media shares intuitively obvious and profound similarities that clearly are indicative of "nature and character" and have little to do with the medium employed. For example, shouldn't a painting of a horse be regarded as similar in nature and character to a sculpture of a horse? Both could have been created by the same artist and could reflect images of the exact same horse. Or, they could have been created centuries apart and have little in common other than reminding the viewer of what a horse looks like along with, of course, some transfer of emotional content as intended by the artist. Aspects of two artworks such as age, authorship, name and color of the horse, *etc.*, seem intuitively more related to "quality and grade," while an image of a horse, portraying its strength and nobility, is core to its *reason for being created*. Likewise, is the Mona Lisa like-kind to Dan Colen's "Cardboard Cutout" (which is one of the works involved in recent Code Sec. 1031 litigation described more completely below), in which canvas is decorated with chewing gum rather than oil paint? Again, we believe that they are both artworks and that selling one and buying the other should be considered a continuous investment in this asset category and fall under the purview of Code Sec. 1031.

In the absence of other guidance, it is *incumbent upon the taxpayer* to implement a strategy based on some guideline or heuristic for determining whether one artwork is like-kind to another as part of the larger process of implementing systematic and well-managed investment activities. We therefore submit the following as a definitional framework that emphasizes that artworks are in a category of their own, one that is separate from other "collectables," based on their ontology—that is, the reason that they are created.

Our proposed definition of like-kind ‘artwork’ is: a tangible expression or application of human creative skill and imagination intended to be visually apprehended and created specifically for the transmission of the creative intent of the artist without secondary use or application to some practical purpose.

With this definition, the following applications seem to satisfy our stated goals:

- Sculptures, paintings, lithographs, photographs and etchings are all tangible and have no intended use other than artistic conveyance of creative intent and all fall into the category of *artworks*.
- Collectables originally serving a purpose aside from visual apprehension, are not artworks because each has an original and distinct purpose, such as:
 - furniture (intended, for example, to be sat upon, slept upon, to hold other objects for storage);
 - numismatic coins (legal tender, however scarce or rare they have become)
 - wine and whiskey (the use is obvious);
 - playing cards (original intent is to be used to play games of chance);
 - baseball cards (original intent is to sell chewing gum); and
 - automobiles (getting from place to place).
- By segmenting the asset category commonly referred to as “art and collectables” into categories defined by intended use, we remove the need to rationalize the counterintuitive ideas of exchanging oil paintings for baseball cards and furniture for lithographs. At the same time, we no longer have to wring our hands over the justification of the highly intuitive idea that oil paintings, lithographs, photographs, etchings, sculpture and other forms of art, created specifically to be artworks, no matter what their quality and grade, are legitimate, well-defined and reasonable in light of the Code Sec. 1031 statues. Thus, these categories are both limited and reasonable in scope.

We recognize that there may be overlaps, counterexamples and ambiguities, so that our proposal does not entirely eliminate problems. For example, what do we do with multimedia art that includes both visual and sound elements? Does one have to decide which is predominant? This is likely to become an increasing problem as the line between static two-dimensional display (classic painting), current multimedia (visual and projected display plus sound) and new technologies that are likely to combine two

and three-dimensional imaging as well as sound. We cannot solve all issues, but we should make a start to address what is currently entirely uncharted territory.

Forward or Reverse— What is the Optimal Form?

Once an owner of art determines that a specific piece qualifies for Code Sec. 1031 deferral on sale and that the intended reinvestment will qualify as like-kind, a logical next step is to create a tax-effective optimization strategy for acquisition and disposition. We believe that the primary criteria for optimization are (1) transaction control and strategic success, (2) maximizing tax efficiencies of all kinds and (3) reducing risk related to the assets. The primary difference between the two forms of exchange—forward and reverse—is the *timing* of the acquisition of the new artwork relative to the disposition of the artworks to be sold. As we describe below, timing and optimization are very much related.

In some cases, the timing of transactions will be dictated by specific factors. For example, a particularly strategic or desirable piece may become available at auction and must either be acquired immediately or lost to a competing bidder. In order to satisfy the strategic goal, a reverse exchange would likely be required. However, if the cash proceeds from sale of the artwork to be sold are absolutely necessary to allow purchase of any replacement artworks, then a forward exchange would be the only option. But, when the various buy and sell factors can be controlled, the potential art seller should certainly analyze the available options to determine which form is best based on an evaluation of the optimization criteria.

We suggest the following pros and cons of forward and reverse exchanges as they relate to artworks:

- Forward exchanges are well understood and avoid some transactional costs that may apply to reverse exchanges. In addition, funds resulting from the sale of the old artworks are available for the purchase of the new artworks. Further, the owner does not have to trust a third party’s ownership of the replacement art once acquired from a seller or of the owner’s art prior to transfer to a buyer.
- As shortcomings, forward exchanges require meeting the Code Sec. 1031(a)(3) 45-day and 180-day deadlines for identification and acquisition of replacement artworks. These deadlines may put pressure on the owner to make purchases that are not ideal and can reduce the spontane-

ity that many art owners enjoy and rely on for the quality of their portfolios. In some cases, the options for effectively managing the purchase to reduce or avoid sales and use tax may be reduced. In addition, in a forward exchange, the cash proceeds of the sale of the old artworks must be held by a QI until the new artworks are acquired. Having a potentially large amount of cash in the hands of a third party is definitely unproductive and may be risky, as discussed further below.

- If new artworks are acquired in a reverse exchange, the remaining task is to sell old artworks. This gives owners the opportunity to make acquisitions that support their strategy for making changes to their art portfolio, rather than having to identify and acquire new artworks while under the artificial pressure of the Code Sec. 1031 deadlines or risk failing to achieve Code Sec. 1031 deferral due to unforeseen delays in closing acquisitions. In addition, the reverse exchange allows the owner to buy at auction or through a gallery or broker precisely when desirable new pieces becomes available, knowing that they can be included in a Code Sec. 1031 exchange. It may be possible to lower sales and use taxes on the purchase of new artworks where the owner lives in a low-tax jurisdiction or one without applicable use taxes. This sometimes can be done by having the entity (usually a LLC) involved in the reverse exchange take title to the purchase in a nontax or reduced tax location or by taking advantage of “trade-in credits” available in some jurisdictions. In either case, the LLC must have certain resale licensing. In addition, since cash received on sale of relinquished art will generally be applied immediately to reimburse the owner’s advance of cash to purchase replacement art, there is no significant period when the cash is not deployed and there need be no period when cash is held by a third party.
- There are also some disadvantages to reverse exchanges, with the most significant being that funds required for the acquisition of the new artworks must be supplied prior to the sale of the old artworks. In addition, due the need to set up a qualified exchange accommodation arrangement using an EAT to hold sufficient “qualified indicia of ownership” unnecessary in forward exchanges, reverse exchange may be more complex and costly and not all Code Sec. 1031 exchange companies handle reverse exchanges or handle them well.

We believe, however, that all things considered, the reverse exchange may be the informed investor’s “secret weapon,” as it allows acquisitions to be made that are both strategic and spontaneous while providing maximum potential for additional deferral of gain, accretive tax efficiencies, asset utilization and security. Art ownership and transfer does not involve the same degree of formality as real estate, making “qualified indicia of ownership” of art easier to achieve for an EAT in an art exchange than for real estate or some other asset classes. The portability of most art allows the owner to rather easily take physical possession of artworks during the period of time that an EAT holds legal title. The key is to work with an experienced and reputable exchange accommodation firm that will assist in implementation of the owner’s desired objectives consistent with both good business practices and tax rules.

Selecting a Code Sec. 1031 Accommodator

The Code Sec. 1031 QI/EAT “industry” consists of approximately 200 firms. There is wide variety in expertise, geographic focus, commitment to asset security and flexibility or problem-solving capabilities.

Some firms are subsidiaries of banks. Bank-owned QIs are excellent choices for deferred exchanges because they generally have the needed expertise to structure moderately-complex deferred exchange transactions and, more importantly, provide the necessary asset security provisions for the cash proceeds of the initial sale. However, bank-owned QIs rarely provide reverse exchange services due to (1) the internally perceived risks of holding title to assets other than cash and (2) the frequent need to sometimes deviate from standard transaction formats and quickly develop customized reverse exchange structures that satisfy the requirements of a client.

Some firms are subsidiaries of real estate title insurance providers. These firms specialize in real estate exchanges and are able to offer both delayed and reverse exchanges. Their expertise with asset categories other than real estate varies, as might be expected. Further, their ability to structure complex exchanges involving unusual purchase or sale arrangements, entity bifurcation for sale tax efficiency or other attractive elements of a strategy for artworks also varies and may sometimes be limited. While generally considered to have excellent asset security provisions, backed by large corporate balance

sheets, one should pause long enough, in light of the recent bankruptcy of LandAmerica—a huge provider of real estate title insurance and related services—due to the mismanagement of deferred exchange proceeds, to determine whether appropriate asset protections have been implemented.

Many other QI/EAT firms are small and sometimes regionally focused independent firms that deal almost exclusively with real estate exchanges. While they may have considerable expertise with real estate, a firm's expertise in other asset categories should be explored thoroughly before engaging the firm for artwork exchanges. Further, asset security issues need to be considered any time these firms are utilized—both for forward and reverse exchanges—to make sure that the owner is protected against accommodation firm failure.

Independent firms vary in their scope of coverage, sophistication, exposure to exchanges involving personal property and degree to which they have developed structures responding to both funds security and transactional complexities of personal property exchanges. Artwork exchanges call for assistance from a QI/EAT that has the depth of experience and expertise to recognize issues and assist the owner and his/her/its advisors in solving them. A key to this is the ability to be very responsive and offer both process flexibility and expertise dedicated to problem-solving.

Perhaps uniquely in the world of fine art, owners are sometimes encouraged to use an art gallery or dealer as an accommodator.⁹ While this approach can work, it seems to be a clear example of the somewhat unique transactional culture in the world of fine art. It also raises the issue of how the disqualified person rules of Reg. §1.1031(k)-1(k) apply. There are several questions specific to Code Sec. 1031 exchanges that arise:

- Does the phrase “agent” apply when the dealer has represented the owner in *any* capacity in the two years leading up to the exchange? If so, the dealer would be disqualified from acting as the owner's QI or EAT since no exception applies.
- Does the dealer have any meaningful expertise or experience regarding the execution of Code Sec. 1031 exchanges? If not, are the owner's other advisors sufficiently familiar with the requirements to assure successful completion of the transaction?
- What security devices are in place to protect against loss of cash exchange proceeds through misappropriation by the dealer or its employees,

and if such devices are established, will they be consistent with applicable requirements, such as Code Sec. 468B?

Certainly, there could be dealers for whom the answers to these questions are in the affirmative, but we suspect that these are in the minority since knowledge of Code Sec. 1031 is not a criterion for success in the world of art.

There is a recent example where such an arrangement did not work. In May 2013, an art owner filed a lawsuit against a New York art gallery because she, allegedly, had not received what she expected in the course of a Code Sec. 1031 exchange of artworks in which the gallery agreed to act as the QI.¹⁰ The complaint states that the owner gave old artworks and cash to the gallery and expected the gallery to, in turn, acquire and deliver certain new artworks as replacement property in the exchange. The complaint alleges that the gallery did not use the cash provided to it by the owner/client for the purchase of the replacement artworks and, instead, was using it for other purposes unrelated to the contemplated exchange transactions.

Making an informed choice from among these various types of professional QI/EAT firms can be challenging. Our suggestions for a set of QI/EAT criteria are:

- a combination of expertise, references, responsiveness, flexibility and a problem-solving mentality that suits the business objectives and personal preferences of the investor
- assurance that the firm is not (even arguably) a “disqualified person”
 - The QI/EAT should be demonstrably compliant with all applicable federal and state statutes affecting this line of business, including Patriot Act or OFAC screening.
- availability of state-of-the-art asset security for both deferred and reverse exchanges
 - use of segregated, dedicated funds management protocols, including qualified escrow or qualified trust accounts, with ability to authenticate each movement of cash
 - availability of corporate guarantees from rated issuers or fidelity bond protection ensuring against theft of the funds, with the value of any bond exceeding total deposits of the company in order to provide complete security of funds
 - if not a bank, then working with a bank that satisfies the Code Sec. 468B requirements
 - use of entity forms for QI and EATs that are designed to be resistant to consolidation

should their parent entities become subject to bankruptcy court jurisdiction

- familiarity and ability to work with artwork purchase and sale arrangements that are less formal and/or more complex than those found in other asset categories. Specifically, one should ensure that:
 - if the purchase and sale agreements between the owner and a buyer or seller are informal, the QI/EAT must be able to accept an assignment of the owner's right as found in such arrangements that will satisfy the Code Sec. 1031 requirements; and
 - the role of galleries, auction firms and consignment arrangements are well understood and taken into account as it relates to transfer of title and the receipt and disbursement of cash.

The choice of QI and EAT may seem to be a trivial issue since many aspects of Code Sec. 1031 exchanges, especially deferred exchanges, have become highly commoditized over time. However, in our view, there are enough examples, some public and some not public, of why it is still important to consider the choice carefully for us to raise this issue.

Conclusion

We are optimistic about art owners' ability to defer income taxation by engaging in like-kind exchanges of artworks that have appreciated in value. The keys to successfully achieving this objective are:

- Treat the artworks to be exchanged consistently with other investment assets and document this treatment.
- Until more complete guidance is available, the most conservative approach is to limit exchanges

to art of the same medium. We believe, however, that with appropriate advice and explanation of the state of the law, many owners can and should choose to utilize a more expansive and defensible definition of the like-kind standard for art that is both intellectually supportable and consistent with the underlying congressional intent behind Code Sec. 1031.

- Employ professional advisors and experienced Code Sec. 1031 accommodation assistance. Make informed decisions about which form of exchange to utilize.

With soaring potential financial benefits of Code Sec. 1031 exchanges of artworks and increasing clarity regarding some previously unclear aspects of such exchanges, it seems like the time is right to explore these options.

ENDNOTES

- ¹ Code Sec. 1411.
- ² We exclude from our discussion the potential for generating income by charging admission to view art, since this is not typical. Obviously private museums and exhibition businesses (e.g., Madame Tussaud's, etc.) may be subject to different analyses.
- ³ Reg. §1.1031(k)-1(g)(4).
- ⁴ Rev. Proc. 2000-37, 2000-2 CB 308.
- ⁵ *D.S. Blodgett*, 88 TCM 90, Dec. 55,232(M), TC Memo. 2003-12, *aff'd*, CA-8, 2005-1 USTC ¶50,146, 394 F3d 1030.
- ⁶ See, e.g., Rev. Proc. 2008-16, 2008-1 CB 547, which "codifies" the results of LTR 8103117 (Oct. 27, 1980); *P.A. Reesink*, 103 TCM 1647, CCH Dec. 59,034(M), TC Memo. 2012-118, *B.E. Moore*, 93 TCM 1275, Dec. 56,950(M), TC Memo. 2007-134.
- ⁷ See, e.g., analysis of majority and dissent in *C.B. Wrightsman*, CtCls, 70-2 USTC ¶9519, 428 F2d 1316, 192 CtCls 722.
- ⁸ LTR 8127089 (Apr. 10, 1981).
- ⁹ See, e.g., *Wierbicki, Like-Kind Exchanges*, TRUSTS & ESTATES, May 2013, at 41.
- ¹⁰ *Holzer v. Stephan Stoyanov Gallery*, Sup. Ct NY, Dkt. No 651791/2013, filed May 5, 2013.

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