

AMERICAN BAR ASSOCIATION TAX SECTION – 2006 SECTION 1031 STATE SURVEY Q & A
(Final Document – 31Out of 56 Jurisdictions Reporting)

LEGEND:

***Received 2006 Response**

N/A – Not Applicable

N/R – No Response in 2005 or 2006

STATE	QUESTIONS													
	Q1: Does State impose rules/restrictions in addition to federal requirements on what qualifies as “like kind” replacement property in order to qualify for a tax deferral?	Q2: If taxpayer consummates tax deferred exchange of personal property when some of like-kind property is located outside of or is moved outside State does State impose tax treatment different from federal tax deferral treatment?	Q3: Does State require special reporting of an exchange on State tax form?	Q4: If taxpayer consummates partially tax deferred exchange in which non-like property is received, is gain reportable in your State computed with reference to depreciation/cost recovery rates allowed in State or is federal cost recovery/depreciation rates used to compute gain in exchange?	Q5: Does your jurisdiction impose a withholding tax, special estimated tax or similar tax on taxable portion of any exchange proceeds?	Q6: Are tax deferral laws applicable in your State for like-kind exchanges different for resident and non-resident taxpayers in any way?	Q7: Is single owner LLC that is disregarded for federal income tax purposes also disregarded for State income tax purposes?	Q8: Is single-owner LLC that is disregarded for federal income tax purposes also disregarded for purposes of State’s sales taxes?	Q9: If State imposes real estate transfer tax, does State impose real estate transfer tax when qualified intermediary or taxpayer involved in exchange transfers ownership of limited liability company that holds record title to exchange property or is the real estate transfer tax only applied when record title to the exchange property is conveyed?	Q10: If State imposes sales or similar tax does State collect sales tax when qualified intermediary or taxpayer involved in exchange transfers ownership of membership interest in LLC that holds title to exchange property or is sales tax only applied when title to exchange property is transferred?	Q11: Does State impose special licensing, bonding or registration requirements on qualified intermediaries or exchange accommodation titleholders that provide exchange services in State?	Q12: Does State recognize special federal income tax treatment?	Q13: (a) Does your State recognize the federal income tax treatment of safe harbor parking arrangements? (b) Are there any unusual features?	
Alabama	No	No	Yes ¹	Federal	No	No	Yes	Yes	No Tax	Applied on change of record or registered title	Maybe ²	³	(a)	(b)
Alaska*	No	No	No	State ⁴	No individual income tax	No	Yes	N/A no sales tax	N/A	N/A	No	N/A	(a) Yes	(b) ⁵
Arizona* no change	No	No	No	State	No	No	Yes	No	N/R	N/R	No	Yes	(a) Yes	(b)

¹ Place on Schedule D as a sale, but no other form should be filed. (Individuals only).

² Maybe. There is a privilege license under 40-21-41 for abstract companies, which they would need if part of their service is furnishing abstracts of title. If they are real estate brokers, they would need the privilege license under 40-12-149. Also, a real estate broker would need to register with the Real Estate Commission (334-242-5544). No other applicable licenses are administered by this Department.

³ Generally, Alabama conforms to federal income tax treatment of like-kind exchanges pursuant to 26 U.S.C. §1031. Questions 11 and 12 have not been addressed in Alabama and we decline to answer. See Alabama statutes Section 40-18-8(c) – Like-kind Exchanges.

⁴ **Federal rates apply—non-oil & gas corporations; State rates apply—oil & gas corps have Alaska-specific depreciation rules.**

⁵ Alaska does not impose a personal income tax or state sales tax.

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Arkansas	Yes ⁶	Yes ⁷	Yes	State	No	No	Yes	No ⁸	Applied on change of record or registered title	Applied on change of record or registered title	N/R	Yes	(a) No ⁹	(b)
California	No	No	Yes ¹⁰	Federal	Yes ¹¹	No	No	Yes	Applied on change of record or registered title	Applied on change of record or registered title	No	Yes	(a) Yes	(b) ¹²
Colorado	No	No	No	Federal	No	No	Yes	No ¹³	N/A	Applied on change of record or registered title	No	Yes	(a) Yes	(b)

⁶ Section 1031 was not adopted. ACA 26-51-412(a) requires assets be valued at fair market value if it can be determined. If fair market value cannot be determined, no gain or loss is recognized.

⁷ Gains and losses are determined at time of exchange. There is no gain deferred and no loss carryforward or carryback. Location of property is not relevant.

⁸ All taxpayers subject to the application of Arkansas Sales or Use Tax must comply. A single-owner LLC is subject to all provisions.

⁹ Have not adopted provisions of Rev. Proc. 2000-37.

¹⁰ Federal Form 8824 must be filed for California state tax purposes if the California basis differs from Federal Basis. Any taxable boot must be reported on California Schedule D-1.

¹¹ Withholding tax of 3 1/3% on all boot if boot is greater than \$1,500.

¹² Question 9: The state of California does not impose a real estate transfer tax. However, various counties in California impose a real estate transfer tax. Question 10: The state of California does not impose a sales tax on the sale of real property.

¹³ The SMLLC can be disregarded for sales tax if a request is filed with the Department and approval is granted.

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Connecticut *-no change	No	No	No	Federal ¹⁴	No	No	Yes	No ¹⁵	Applied on change of ownership of LLC ¹⁶	Applied on change of ownership of LLC ¹⁷	No ¹⁸	Yes	(a) Yes	(b)
Delaware													(a)	(b)
District of Columbia	No	No	No	Federal	No	No	Yes	No ¹⁹	Applied on change of record or registered title	N/A	No	Yes	(a) Yes	(b) None

¹⁴ Gain is computed in the same manner as it is for federal income tax purposes. The amount deductible for depreciation and cost recovery is ultimately the same but the timing of the deduction may differ. See Special Notices 2002(10), 2002(12) and 2003(21).

¹⁵ See Special Notice 99(3).

¹⁶ The real estate conveyance tax would not apply, but the controlling interest transfer tax could apply.

¹⁷ The sales tax would not apply, but the controlling interest transfer tax could apply.

¹⁸ Connecticut tax laws impose no such requirement.

¹⁹ But transaction may be considered as casual and isolated and/or subject to sales in bulk provision.

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Florida*-no change	No	No	No	Federal	No	No	Yes	No ²⁰	Applied on change of record or registered title	Applied on change of record or registered title ²¹	No	Yes ²²	(a) Yes ²³ (b)
Georgia*	Yes ²⁴	Yes See Q1	No	State ²⁵	Yes ²⁶	Yes-See Answer to Q5	Yes	No-treated as separate entity	Applied on change of record or registered title	Applied on change of record or registered title	²⁷	Yes-but GA is not a community property state	(a) Yes (b)

²⁰ Section 608.471(3), F.S., states that LLCs that are disregarded for corporate income tax purposes are treated as separate legal entities for all non-income tax purposes.

²¹ Sales tax applies not only on the transfer of title, but also to the transfer of possession for consideration.

²² Florida does not have a personal income tax.

²³ Section 220.44, F.S., allows the Department of Revenue to adjust any agreement, understanding or arrangement which causes Florida net income to be reflected improperly.

²⁴ For tax years beginning 1/1/04 Georgia’s treatment is the same as federal. For years beginning before 1/1/04 Georgia taxed Georgia property exchanged for non-Georgia property.

²⁵ Georgia has not adopted 168(k) depreciation and did not adopt increased Section 179 until 1/1/05.

²⁶ **2006 Response: 4% of the gain on the sale if the property is sold by a nonresident.** (2005 response: 3% of the gross proceeds or (if elected) the gain on the sale if the property is sold by a nonresident)

²⁷ Please contact Georgia Secretary of State.

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Hawaii*	No	No	Yes ²⁸	State	Yes ²⁹	No	Yes	No ³⁰	Applied on change of record or registered title	Applied on change of record or registered title	No	No-Hawaii is not a community property state	(a) Yes	(b)
Idaho*-no change	No	No	No	Federal ³¹	No	No	Yes	No ³²	N/A	Applied on change of record or registered title	³³	Yes	(a) Yes	(b) N/A
Illinois*-no change	No	No	No	Federal	No	No	Yes	No ³⁴	Applied on change of record or registered title	Applied on change of record or registered title	No	Yes	(a) Yes	(b)
Indiana	No	No	No	State	No	No	Yes	Yes	N/R	N/R	No	Yes	(a) Yes	(b)

²⁸ State of Hawaii requires the submission of Federal Income Tax Form 8824.

²⁹ HRS §235-68. Every transferee is required to withhold and pay to Department of Taxation 5% on the amount realized on the disposition of Hawaii real property by a transferor who is not a Hawaii resident, unless the disposition is exempt from withholding.

³⁰ The State of Hawaii does not have a sales tax. All business entities, including a single member LLC, are taxable at the entity level for purposes of the general excise tax and other gross receipts and transaction-type Hawaii tax laws.

³¹ Federal rates apply with the exception of 30% and 50% bonus depreciation. Idaho Code §63-30220

³² There are exemptions for related party transactions, however. See I.C. Sec. 63-3622K.

³³ Please contact Idaho Real Estate Commission 208-334-3285 or www.irec.idaho.gov.

³⁴ An LLC, whether or not disregarded for Federal income tax purposes, is treated as a taxpayer for all sales and use tax purposes.

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Iowa*-no change	No	No	No	Federal	No	No	Yes	Yes	Applied on change of record or registered title	Applied on change of ownership of LLC	No	Yes	(a) Yes (b)
Kansas	No	No	No	Federal	No	No	Yes	No	³⁵	³⁶	No	Yes	(a) Yes ³⁷ (b)
Kentucky *	No	No	No	State	No ³⁸	No	No ³⁹	No	N/R	Yes ⁴⁰	N/R	⁴¹	(a) Yes (b)

³⁵ Kansas does not impose a real estate transfer tax.

³⁶ Yes. Use tax would apply to the LLC that holds the property.

³⁷ The starting point for the calculation of the Kansas income tax is federal adjusted gross income (FAGI). As a result, the treatment accorded a Section 1031 like-kind exchange on the federal level will flow through to Kansas as part of FAGI. This is also true of the treatment of “disregarded” entities, “safe harbor” rules, etc. Kansas withholding on Section 1031 like-kind exchanges is also linked to federal withholding in that if federal withholding is not required state withholding is not required.

³⁸ **Unless gains are from a partnership subject to nonresident withholding 103 KAR 18:070.**

³⁹ **2006 Response: Yes-if the single member is a corporation. No if the single member is an individual.** 2005 response: For tax years beginning on or after January 1, 2005, limited liability companies (including single member LLCs) are subject to Kentucky Corporate Income Tax.

⁴⁰ **Sales tax applies to receipts from the transfer of ownership or title of tangible personal property unless a specific exemption is applicable.**

⁴¹ Adopted for REITs and Homeowners Associations.

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Louisiana *	No ⁴²	No	No	Federal ⁴³	No ⁴⁴	No	Yes ⁴⁵	No ⁴⁶	N/A	⁴⁷	No ⁴⁸	Yes ⁴⁹	(a) Yes (b) No ⁵⁰
Maryland *	No	No	No	State ⁵¹	Yes ⁵²	No	Yes	No ⁵³	Applied on change of record or registered title	Applied on change of record or registered title	No	⁵⁴	(a) Yes (b) Yes ⁵⁵

⁴² 7/26/06 response: No, but it does for corporations with respect to Section 1033 gain attributable to non-LA replacement property.

⁴³ 7/26/06 response: After 1986 based on Federal, but there are post-1986 adjustments to basis for certain credits allowable under Federal tax law, but not under LA tax law (see LRS 47:287.751).

⁴⁴ 7/26/06 response: No, except for tax imposed on nonresident members or partners of entities treated as partnerships under Louisiana income tax law and engaged in activities in LA—see LRS 47: 201 (this answer is similar to footnote 38, with respect to the Kentucky response).

⁴⁵ 7/26/06 response: Yes, for Louisiana income tax purposes, but not for Louisiana corporate franchise tax purposes—see LRS 12:1368)and RS 47:301.

⁴⁶ 7/26/06 response: No, see LRS 47:301(4) and RS 47: 301(8) (this answer similar to footnote 57, with respect to Minnesota response). 2006 response: If a SMLLC owed sales tax, LA would attempt to collect from the SMLLC who was actually a party to the sales transaction. If it appeared that the factors necessary to pierce the corporate veil were present, then the State might look through the LLC.

⁴⁷ Tax applied only on change of record or registered title and then only to certain tangible personal property not otherwise excluded as an occasional sale or under some other provision.

⁴⁸ 7/26/06 response: No, but a local Parish or City occupational license tax would be imposed on a qualified intermediary or accommodation titleholder.

⁴⁹ 7/26/2006 response: Louisiana is a community property state.

⁵⁰ 7/26/06 response: (a) yes. (b) No, but we have the identical issue that exists in Montana, namely that the Louisiana Revenue Dept. would interpret our definition of Louisiana source income to include gain realized on the sale or exchange of the Louisiana property, but not recognized under Section 1031, and to retain its Louisiana source income classification when the deferred gain is recognized for Federal income tax purposes (this answer is similar to footnote 64, with respect to the Montana response—CHECK FOOTNOTES BECAUSE THEY WILL HAVE BEEN CHANGE UPON THE ABOVE REVISIONS.)

⁵¹ But ONLY in instances where Maryland law has been decoupled from federal law and an election has not been made to forego the federal change. (i.e., bonus depreciation, IRC Sec 179, and special 5-year NOL provisions).

⁵² **2006 Response: Section 10-912 of the Tax-General Article, Annotated Code of Maryland (2004 Replacement Volume) provides for withholding of Maryland income tax on the amount of cash or other non like-kind replacement property received as part of the exchange. Tax is withheld at the rate of 4.75% for nonresident individuals and 7% for nonresident entities.** 2005 Response: Same as 2006, but rate was 6% for nonresident individuals & 7% for nonresident entities.

⁵³ The federal and state laws that provide for the disregarded entity provisions only apply to income taxes. For other purposes they are separate and distinct entities. Transactions between the LLC and its owner(s) and/or others do not receive any special sales and use tax treatment.

⁵⁴ Maryland law addresses single-member LLCs where the entity is disregarded for federal income tax purposes. Maryland has also adopted the federal “Check-the-box” regulations. Maryland has not had the opportunity to review the effect/application of Rev. Proc. 2002-69 to Maryland law.

⁵⁵ A nonresident individual or a nonresident entity MUST apply for an exemption from the income tax withholding. The Form MW506AE is used for this purpose. If a Certificate of Full or Partial Exemption is not issued by the Comptroller’s office, then the applicable tax must be withheld and properly remitted.

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Massachusetts* -no change	Yes ⁵⁶	Yes ⁵⁷	No	State	No	Yes ⁵⁸	Yes	No ⁵⁹	Applied on change of record or registered title	N/A	No	No ⁶⁰	(a) Yes	(b)
Michigan*-no change	No	No	No	Federal	No	No	Yes	No ⁶¹	Applied on change of record or registered title	Applied on change of record or registered title	No	Yes	(a) Yes	(b)
Minnesota*	No	No	No	Federal	No	No	Yes ⁶²	No ⁶³	Applied on change of record or registered title	Applied on change or record or registered title	N/R	Yes	(a) Yes	(b)

⁵⁶ Massachusetts does not tax a capital gain realized by a non-resident on foreign real estate.

⁵⁷ Yes, only if the taxpayer is a non-resident. Massachusetts does not tax a capital gain realized by a non-resident on foreign real estate.

⁵⁸ Massachusetts does not tax a capital gain realized by a non-resident on foreign real estate.

⁵⁹ Massachusetts law imposes a five percent sales tax on retail sales of tangible personal property by any vendor, unless otherwise exempt. G.L. c. 64H, s. 2. No specific exemption exists for sales by or to lics. G.L. c. 64H, s.6.

⁶⁰ N/A. Massachusetts is not a community property state.

⁶¹ In the case of a single member LLC who is disregarded as a separate entity for federal tax purposes, the LLC is still a legal entity and is required to register for sales tax if making retail sales in Michigan. See RAB 1999-9.

⁶² See Department of Revenue Notice 98-08.

⁶³ **A single member LLC is treated as a separate person for Minnesota sales tax purposes. See Revenue Notice 2002-10.**

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Mississippi	Yes ⁶⁴	Yes ⁶⁵	No	State	No	No	Yes	No	N/R	N/R	No	Yes	(a) Yes (b)
Missouri*-no change	No	No	No	Federal	No	No	Yes	Yes	⁶⁶	⁶⁷	No	Yes	(a) Yes (b)
Montana*	No	No	2005-No 2006-Yes ⁶⁸	Federal	No	No	Yes ⁶⁹	No state sales tax	N/A	N/A	No	Yes	(a) Yes (b) ⁷⁰

⁶⁴ The replacement property must be located in Mississippi in order to secure tax deferral.

⁶⁵ If in the exchange of personal property located in Mississippi for personal property of which some of it is located in another state the entire tax will not be deferred. The tax on that gain derived from the Mississippi property given up for that property located out of the state will not be deferred.

⁶⁶ Missouri has no real estate transfer tax.

⁶⁷ Missouri does not tax the transfer of a membership interest.

⁶⁸ **A questionnaire with the tax returns asks if they have completed Form 8824 (among others). If they have, they must attach copy to state return.**

⁶⁹ Single member LLC must file Montana Form DER-1.

⁷⁰ **2006 response: It may not be considered an “unusual feature” but the Dept. of Revenue will begin enforcing compliance with a portion of Montana’s law defining “Montana source income” and its interaction with like-kind exchanges. Section 15-30-101(18)(a)(ii) defines the “gain attributable to the sale or other transfer of tangible property located in the state,...” as being Montana source income. The impact is that any gain realized on the sale or exchange of Montana property but not recognized under the provisions of section 1031 retains its classification as Montana source income even if the Montana property is exchanged for property in another state. The Montana definition does not create a taxable event at the time of the exchange. But it does require that, when the deferred gains are ultimately recognized for federal tax purposes, a non-Montana resident would be required to file a Montana state tax return and include the Montana portion of the gain in Montana source income.** 2005 response: HB 799 introduced in the 59th legislative session (2005 legislative session) provided for current taxation or a lien to secure deferred payments of taxes when Montana real estate is exchanged for foreign property (non-Montana property). This bill was tabled in the House Taxation Committee. Montana is interested in the findings of this survey and the approach by other states in the treatment of 1031 like-kind exchanges.

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	Q1: Does State impose rules/restrictions in addition to federal requirements on what qualifies as “like kind” replacement property in order to qualify for a tax deferral?	Q2: If taxpayer consummates tax deferred exchange of personal property when some of like-kind property is located outside of or is moved outside State does State impose tax treatment different from federal tax deferral treatment?	Q3: Does State require special reporting of an exchange on State tax form?	Q4: If taxpayer consummates partially tax deferred exchange in which non-like property is received, is gain reportable in your State computed with reference to depreciation/cost recovery rates allowed in State or is federal cost recovery/depreciation rates used to compute gain in exchange?	Q5: Does your jurisdiction impose a withholding tax, special estimated tax or similar tax on taxable portion of any exchange proceeds?	Q6: Are tax deferral laws applicable in your State for like-kind exchanges different for resident and non-resident taxpayers in any way?	Q7: Is single owner LLC that is disregarded for federal income tax purposes also disregarded for State income tax purposes?	Q8: Is single-owner LLC that is disregarded for federal income tax purposes also disregarded for purposes of State’s sales taxes?	Q9: If State imposes real estate transfer tax, does State impose real estate transfer tax when qualified intermediary or taxpayer involved in exchange transfers ownership of limited liability company that holds record title to exchange property or is the real estate transfer tax only applied when record title to the exchange property is conveyed?	Q10: If State imposes sales or similar tax does State collect sales tax when qualified intermediary or taxpayer involved in exchange transfers ownership of membership interest in LLC that holds title to exchange property or is sales tax only applied when title to exchange property is transferred?	Q11: Does State impose special licensing, bonding or registration requirements on qualified intermediaries or exchange accommodation titleholders that provide exchange services in State?	Q12: Does State recognize special federal income tax treatment?	Q13: (a) Does your State recognize the federal income tax treatment of safe harbor parking arrangements? (b) Are there any unusual features?
Nebraska*-no change	No	No	No	Federal	No	No	Yes	No ⁷¹	⁷²	Applied on change of record or registered title	No	Yes	(a) Yes (b)
Nevada*	⁷³	See Q1	See Q1	See Q1	See Q1	See Q1	See Q1	No ⁷⁴	⁷⁵	⁷⁶	2005-Yes ⁷⁷ 2006-No	2005-No ⁷⁸ 2006-Yes	(a) See Q1 (b)
New Hampshire*	No but will follow IRC as of 12/31/00	No	No	State but NH uses IRC as of 12/31/00	No	No	No- ⁷⁹	No-NH has no general sales tax	Applied on change of ownership of LLC	No sales tax	No ⁸⁰	No-see answer to Q7	(a) Yes (b)

⁷¹ The LLC is treated as an entity separate from its owner for sales tax purposes.

⁷² Nebraska imposes a documentary stamp tax on real estate transfers. The application of such a tax is based on the specific facts of each transfer. For additional information see NE Rev. Stat. §76-901 through 76-908.

⁷³ There is no State income tax in Nevada.

⁷⁴ **2006 response: But is disregarded for purposes of state business license. Whether LLC is disregarded or not has no sales tax consequences under Nevada law.** 2005 response: Tangible personal property is taxable for sales and use taxes, no matter!

⁷⁵ **2006 response: Tax applied only on change of record of registered title.** 2005 response: Transfer tax is imposed on one leg of the two-legged process, usually the first leg when transferring to QI.

⁷⁶ **2006 response: Tax applied only on change of record of registered title.** 2005 response: No sales tax in exchange.

⁷⁷ Business license for any person, corporation, LLC, etc. doing business in the State (\$100 renewal fee). Modified Business Tax General Business (.65%); modified Business Tax Financial Institution (2%). Surcharge on gross wages reported for unemployment insurance less deduction for health care paid by employer for employee.

⁷⁸ **2006 response: For business license, the LLC would be disregarded under these circumstances.** 2005 response: Recognized only for business license. No State income tax in Nevada.

⁷⁹ **NH requires separate entity reporting. SMLLC must request a “Dept. ID number” on Form DP-200 and file a business tax return under that number.**

⁸⁰ **None that we know of, but the DRA would not be responsible for such laws, if they existed here.**

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	Q1: Does State impose rules/restrictions in addition to federal requirements on what qualifies as "like kind" replacement property in order to qualify for a tax deferral?	Q2: If taxpayer consummates tax deferred exchange of personal property when some of like-kind property is located outside of or is moved outside State does State impose tax treatment different from federal tax deferral treatment?	Q3: Does State require special reporting of an exchange on State tax form?	Q4: If taxpayer consummates partially tax deferred exchange in which non-like property is received, is gain reportable in your State computed with reference to depreciation/cost recovery rates allowed in State or is federal cost recovery/depreciation rates used to compute gain in exchange?	Q5: Does your jurisdiction impose a withholding tax, special estimated tax or similar tax on taxable portion of any exchange proceeds?	Q6: Are tax deferral laws applicable in your State for like-kind exchanges different for resident and non-resident taxpayers in any way?	Q7: Is single owner LLC that is disregarded for federal income tax purposes also disregarded for State income tax purposes?	Q8: Is single-owner LLC that is disregarded for federal income tax purposes also disregarded for purposes of State's sales taxes?	Q9: If State imposes real estate transfer tax, does State impose real estate transfer tax when qualified intermediary or taxpayer involved in exchange transfers ownership of limited liability company that holds record title to exchange property or is the real estate transfer tax only applied when record title to the exchange property is conveyed?	Q10: If State imposes sales or similar tax does State collect sales tax when qualified intermediary or taxpayer involved in exchange transfers ownership of membership interest in LLC that holds title to exchange property or is sales tax only applied when title to exchange property is transferred?	Q11: Does State impose special licensing, bonding or registration requirements on qualified intermediaries or exchange accommodation titleholders that provide exchange services in State?	Q12: Does State recognize special federal income tax treatment?	Q13: (a) Does your State recognize the federal income tax treatment of safe harbor parking arrangements? (b) Are there any unusual features?
New Jersey*	No	No	No	State	2005-No 2006- Yes⁸¹	No	Yes	N/R	Applied on change of record or registered title	N/R	No	Yes	(a) N/R (b) N/R
New Mexico*	No	No	No	Federal	No	No	Yes	2005-No ⁸² 2006-Yes	N/R	⁸³	No	2005-No 2006-Yes	(a) 2005-Yes 2006-No⁸⁴ (b)
New York	No	No	No	State	No	No ⁸⁵	Yes	No ⁸⁶	⁸⁷	⁸⁸	No	No ⁸⁹	(a) Yes ⁹⁰ (b)

⁸¹ **If taxpayer receives taxable income, estimated NJ income tax is required under N.J.S.A. 54A.8-4.**

⁸² 2005 response: Gross receipts tax at entity level.

⁸³ **2006 response: Tax applied only on change of record or registered title.** 2005 response: No gross receipts tax on real estate sales.

⁸⁴ **No position taken.**

⁸⁵ Generally, non-residents have to make estimated payments but when there is an Internal Revenue Code section 1031 exchange where no gain or loss is recognized, the non-resident taxpayer is required to check a box on Form IT-2663-1 and state that the transaction is a 1031 exchange.

⁸⁶ An LLC is a person as defined in section 1101(a) of the Tax Law. As a separate person, it may have obligations to pay sales and compensating use taxes. There are certain transactions relating to a LLC that may be excluded from tax under section 1101(b)(4) of the Tax Law.

⁸⁷ Neither is correct under New York State law. Tax is applied when there is a beneficial change in ownership.

⁸⁸ As an exchange of like-kind property, the mutual trade of tangible personal property would be a barter which is included in the definition of sale in Tax Law section 1101(b)(5). As such, each transfer would be subject to sales tax, regardless of the form of the ownership (individual or LLC). Section 1101(b)(5) of the Tax Law defines sale as the transfer of title or possession, or both, for a consideration. Thus, sales tax would apply regardless of whether title or possession is transferred as long as there is consideration.

⁸⁹ New York is not a community property state.

⁹⁰ The correct cite is Rev. Proc. 2000-37, 2000-2 CB 308, which has been modified by Rev. Proc. 2004-31.

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	Q1: Does State impose rules/restrictions in addition to federal requirements on what qualifies as "like kind" replacement property in order to qualify for a tax deferral?	Q2: If taxpayer consummates tax deferred exchange of personal property when some of like-kind property is located outside of or is moved outside State does State impose tax treatment different from federal tax deferral treatment?	Q3: Does State require special reporting of an exchange on State tax form?	Q4: If taxpayer consummates partially tax deferred exchange in which non-like property is received, is gain reportable in your State computed with reference to depreciation/cost recovery rates allowed in State or is federal cost recovery/depreciation rates used to compute gain in exchange?	Q5: Does your jurisdiction impose a withholding tax, special estimated tax or similar tax on taxable portion of any exchange proceeds?	Q6: Are tax deferral laws applicable in your State for like-kind exchanges different for resident and non-resident taxpayers in any way?	Q7: Is single owner LLC that is disregarded for federal income tax purposes also disregarded for State income tax purposes?	Q8: Is single-owner LLC that is disregarded for federal income tax purposes also disregarded for purposes of State's sales taxes?	Q9: If State imposes real estate transfer tax, does State impose real estate transfer tax when qualified intermediary or taxpayer involved in exchange transfers ownership of limited liability company that holds record title to exchange property or is the real estate transfer tax only applied when record title to the exchange property is conveyed?	Q10: If State imposes sales or similar tax does State collect sales tax when qualified intermediary or taxpayer involved in exchange transfers ownership of membership interest in LLC that holds title to exchange property or is sales tax only applied when title to exchange property is transferred?	Q11: Does State impose special licensing, bonding or registration requirements on qualified intermediaries or exchange accommodation titleholders that provide exchange services in State?	Q12: Does State recognize special federal income tax treatment?	Q13: (a) Does your State recognize the federal income tax treatment of safe harbor parking arrangements? (b) Are there any unusual features?	
North Carolina*-no change	No	No	No	Federal	No	No ⁹¹	Yes	No ⁹²	Applied on change of record or registered title	Applied on change of record or registered title	No	Yes	(a) Yes	(b)
North Dakota*	No	No	No	Federal	No	No	Yes	No ⁹³	N/A	⁹⁴	⁹⁵	2005-N/A 2006-Yes	(a) Yes	(b)
Ohio	No	No	No	Federal	No	No	Yes	No	Applied on change of record or registered title	Applied on change of record or registered title	⁹⁶	Yes	(a) Yes	(b)

⁹¹ The gain from the sale of replacement property is reportable on the federal return. However, the gain is reportable to NC only if the replacement property is located in NC.

⁹² If there are NC sales, there is a sales tax liability regardless of the type of entity.

⁹³ For sales tax purposes, the LLC must register for a sales tax permit.

⁹⁴ Assuming the property involved is subject to sales tax, the sales tax applies when title to the property is transferred. The transfer of an ownership interest in an LLC (holding title to property that is subject to an exchange) does not subject the property subject to exchange to sales tax.

⁹⁵ This is not within our purview. Contact the ND Real Estate Commission.

⁹⁶ For information please contact the Ohio Division of Real Estate and Professional Licensing, Ohio Dept. of Commerce, 614-466-4100.

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	Q1: Does State impose rules/restrictions in addition to federal requirements on what qualifies as “like kind” replacement property in order to qualify for a tax deferral?	Q2: If taxpayer consummates tax deferred exchange of personal property when some of like-kind property is located outside of or is moved outside State does State impose tax treatment different from federal tax deferral treatment?	Q3: Does State require special reporting of an exchange on State tax form?	Q4: If taxpayer consummates partially tax deferred exchange in which non-like property is received, is gain reportable in your State computed with reference to depreciation/cost recovery rates allowed in State or is federal cost recovery/depreciation rates used to compute gain in exchange?	Q5: Does your jurisdiction impose a withholding tax, special estimated tax or similar tax on taxable portion of any exchange proceeds?	Q6: Are tax deferral laws applicable in your State for like-kind exchanges different for resident and non-resident taxpayers in any way?	Q7: Is single owner LLC that is disregarded for federal income tax purposes also disregarded for State income tax purposes?	Q8: Is single-owner LLC that is disregarded for federal income tax purposes also disregarded for purposes of State’s sales taxes?	Q9: If State imposes real estate transfer tax, does State impose real estate transfer tax when qualified intermediary or taxpayer involved in exchange transfers ownership of limited liability company that holds record title to exchange property or is the real estate transfer tax only applied when record title to the exchange property is conveyed?	Q10: If State imposes sales or similar tax does State collect sales tax when qualified intermediary or taxpayer involved in exchange transfers ownership of membership interest in LLC that holds title to exchange property or is sales tax only applied when title to exchange property is transferred?	Q11: Does State impose special licensing, bonding or registration requirements on qualified intermediaries or exchange accommodation titleholders that provide exchange services in State?	Q12: Does State recognize special federal income tax treatment?	Q13: (a) Does your State recognize the federal income tax treatment of safe harbor parking arrangements? (b) Are there any unusual features?
Oklahoma	No	No	No	Federal	No	No	Yes	No ⁹⁷	N/R	Applied on change of record or registered title	No	Yes	(a) Yes (b)
Oregon*	Yes ⁹⁸	Yes ⁹⁹	Yes ¹⁰⁰	Federal	No	No	Yes ¹⁰¹	Yes ¹⁰²	Tax applied only on change of record or registered title to exchange property or on change of ownership of LLC (“look through treatment”)	Tax applied only on change of record or registered title to exchange property or on change of ownership of LLC (“look through treatment”)	¹⁰³	No ¹⁰⁴	(a) Yes (b)

⁹⁷ Each transfer between separate legal entities is taxable OAC 710:65-13-201.

⁹⁸ Oregon maintains jurisdiction to tax out-of-state replacement property when the replacement property is subsequently disposed of by the taxpayer.

⁹⁹ Same as Q1.

¹⁰⁰ Oregon requires that taxpayers file Oregon Form 24, Oregon Like-Kind Exchanges/Involuntary Conversions, with their Oregon return in the year of the exchange or conversion.

¹⁰¹ **Oregon Revised Statute 63.810 states in part that “For purposes of ORS Chapters 305 to 325, a limited liability company formed under this chapter ... shall be classified in the same manner as it is classified for federal income tax purposes.”**

¹⁰² **Oregon does not have a sales tax.**

¹⁰³ This is not a question for the Oregon Department of Revenue.

¹⁰⁴ Oregon is not a community property state. Two-owner LLCs formed in Oregon will not be disregarded for Oregon tax purposes. If two-owner LLC was formed in a community property state and was disregarded for both federal and the other state’s tax purposes and the LLC later moved into Oregon, Oregon would recognize the special tax treatment.

STATE	QUESTIONS													
	Q1: Does State impose rules /restrictions in addition to federal requirements on what qualifies as "like kind" replacement property in order to qualify for a tax deferral?	Q2: If taxpayer consummates tax deferred exchange of personal property when some of like-kind property is located outside of or is moved outside State does State impose tax treatment different from federal tax deferral treatment?	Q3: Does State require special reporting of an exchange on State tax form?	Q4: If taxpayer consummates partially tax deferred exchange in which non-like property is received, is gain reportable in your State computed with reference to depreciation/cost recovery rates allowed in State or is federal cost recovery/depreciation rates used to compute gain in exchange?	Q5: Does your jurisdiction impose a withholding tax, special estimated tax or similar tax on taxable portion of any exchange proceeds?	Q6: Are tax deferral laws applicable in your State for like-kind exchanges different for resident and non-resident taxpayers in any way?	Q7: Is single owner LLC that is disregarded for federal income tax purposes also disregarded for State income tax purposes?	Q8: Is single-owner LLC that is disregarded for federal income tax purposes also disregarded for purposes of State's sales taxes?	Q9: If State imposes real estate transfer tax, does State impose real estate transfer tax when qualified intermediary or taxpayer involved in exchange transfers ownership of limited liability company that holds record title to exchange property or is the real estate transfer tax only applied when record title to the exchange property is conveyed?	Q10: If State imposes sales or similar tax does State collect sales tax when qualified intermediary or taxpayer involved in exchange transfers ownership of membership interest in LLC that holds title to exchange property or is sales tax only applied when title to exchange property is transferred?	Q11: Does State impose special licensing, bonding or registration requirements on qualified intermediaries or exchange accommodation titleholders that provide exchange services in State?	Q12: Does State recognize special federal income tax treatment?	Q13: (a) Does your State recognize the federal income tax treatment of safe harbor parking arrangements? (b) Are there any unusual features?	
Penn-sylvania*	Yes ¹⁰⁵	Yes ¹⁰⁶	No	State	Yes ¹⁰⁷	No	Yes	No ¹⁰⁸	Applied on change of ownership of LLC	Applied on change of record or registered title & change of ownership of LLC	¹⁰⁹ Yes	No	(a) No ¹¹⁰	(b) No
Rhode Island*-no change	No	No	No	State	Yes ¹¹¹	No	Yes	Yes	Applied on change of record or registered title	Applied on change of record or registered title	No	Yes	(a) Yes	(b)

¹⁰⁵ PA does not recognize the deferral of gain on IRC §1031 exchanger for personal income tax purposes. However, PA will permit the deferral of gain in a like-kind exchange if permitted by the taxpayers method of accounting. See Private letter rulings PIT-99-102 and PIT-01-062. This is a rare exception.

¹⁰⁶ See response to Q1.

¹⁰⁷ PA estimated tax payment rules are applicable to all taxable income that is not subject to employer withholding.

¹⁰⁸ If the LLC is a licensed vendor, it must collect and remit sales tax; **treated as separate legal entity.**

¹⁰⁹ **2006 Response: For sales tax purposes QIs or EATs may have an obligation to register for sales tax license and to charge and collect PA sales tax. There may be other licensing, bonding or registration requirements outside the purview of the Dept. Of Revenue.** 2005 Response: The Department of Revenue is not the appropriate agency to respond to this question.

¹¹⁰ See response to Q1. Documents that convey title to real estate to or from a parking entity are potentially subject to PA realty transfer **or sales** tax. The parking entity is not necessarily recognized as an agent.

¹¹¹ Rhode Island requires back-up withholding on the taxable gain on the sale of real estate by non-residents.

STATE	QUESTIONS													
	Q1: Does State impose rules/restrictions in addition to federal requirements on what qualifies as “like kind” replacement property in order to qualify for a tax deferral?	Q2: If taxpayer consummates tax deferred exchange of personal property when some of like-kind property is located outside of or is moved outside State does State impose tax treatment different from federal tax deferral treatment?	Q3: Does State require special reporting of an exchange on State tax form?	Q4: If taxpayer consummates partially tax deferred exchange in which non-like property is received, is gain reportable in your State computed with reference to depreciation/cost recovery rates allowed in State or is federal cost recovery/depreciation rates used to compute gain in exchange?	Q5: Does your jurisdiction impose a withholding tax, special estimated tax or similar tax on taxable portion of any exchange proceeds?	Q6: Are tax deferral laws applicable in your State for like-kind exchanges different for resident and non-resident taxpayers in any way?	Q7: Is single owner LLC that is disregarded for federal income tax purposes also disregarded for State income tax purposes?	Q8: Is single-owner LLC that is disregarded for federal income tax purposes also disregarded for purposes of State’s sales taxes?	Q9: If State imposes real estate transfer tax, does State impose real estate transfer tax when qualified intermediary or taxpayer involved in exchange transfers ownership of limited liability company that holds record title to exchange property or is the real estate transfer tax only applied when record title to the exchange property is conveyed?	Q10: If State imposes sales or similar tax does State collect sales tax when qualified intermediary or taxpayer involved in exchange transfers ownership of membership interest in LLC that holds title to exchange property or is sales tax only applied when title to exchange property is transferred?	Q11: Does State impose special licensing, bonding or registration requirements on qualified intermediaries or exchange accommodation titleholders that provide exchange services in State?	Q12: Does State recognize special federal income tax treatment?	Q13: (a) Does your State recognize the federal income tax treatment of safe harbor parking arrangements? (b) Are there any unusual features?	
South Carolina*-no change	No	No	Yes ¹¹²	State	Yes ¹¹³	No	Yes	Yes	Applied on change of record or registered title ¹¹⁴	On change of record or registered title if seller engaged in selling tangible personal property at retail ¹¹⁵	No	Yes – not community property state	(a) Yes	(b) ¹¹⁶
South Dakota*	¹¹⁷ N/R	N/R	N/R	N/R	N/R	N/R	No	Applied on change of record or registered title to exchange property	Same answer as Q9	N/R	N/R	N/R	(a) N/R	(b) N/R

¹¹² Exchanges involving the transfer of real estate by non-resident sellers may require the buyer to withhold taxes, which would be reported on Form I-290. See SC Revenue Advisory Bulletin #02-6, Question 22 for details.

¹¹³ See answer to Question 3.

¹¹⁴ Applied on change of ownership of LLC if single-member LLC and instrument recorded.

¹¹⁵ On change of ownership of LLC if single-member LLC.

¹¹⁶ **2006 Response: See Rev. Rul. 99-2 re deed recording fees and like-kind exchanges. Also see SC Private Rev. Op. No. 2002-2 (2002 WL 31371230) re like-kind exchanges and automobile leases. 2005 Response: See SC Rev. Rul. 99-7 re: deed recording fees and like-kind exchanges (See also answer to Q3.)**

¹¹⁷ The State of South Dakota does not have an income tax.

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	Q1: Does State impose rules/restrictions in addition to federal requirements on what qualifies as “like kind” replacement property in order to qualify for a tax deferral?	Q2: If taxpayer consummates tax deferred exchange of personal property when some of like-kind property is located outside of or is moved outside State does State impose tax treatment different from federal tax deferral treatment?	Q3: Does State require special reporting of an exchange on State tax form?	Q4: If taxpayer consummates partially tax deferred exchange in which non-like property is received, is gain reportable in your State computed with reference to depreciation/cost recovery rates allowed in State or is federal cost recovery/depreciation rates used to compute gain in exchange?	Q5: Does your jurisdiction impose a withholding tax, special estimated tax or similar tax on taxable portion of any exchange proceeds?	Q6: Are tax deferral laws applicable in your State for like-kind exchanges different for resident and non-resident taxpayers in any way?	Q7: Is single owner LLC that is disregarded for federal income tax purposes also disregarded for State income tax purposes?	Q8: Is single-owner LLC that is disregarded for federal income tax purposes also disregarded for purposes of State’s sales taxes?	Q9: If State imposes real estate transfer tax, does State impose real estate transfer tax when qualified intermediary or taxpayer involved in exchange transfers ownership of limited liability company that holds record title to exchange property or is the real estate transfer tax only applied when record title to the exchange property is conveyed?	Q10: If State imposes sales or similar tax does State collect sales tax when qualified intermediary or taxpayer involved in exchange transfers ownership of membership interest in LLC that holds title to exchange property or is sales tax only applied when title to exchange property is transferred?	Q11: Does State impose special licensing, bonding or registration requirements on qualified intermediaries or exchange accommodation titleholders that provide exchange services in State?	Q12: Does State recognize special federal income tax treatment?	Q13. (a) Does your State recognize the federal income tax treatment of safe harbor parking arrangements? (b) Are there any unusual features?	
Tennessee*-no change	No	No	No	Federal ¹¹⁸	No	No	No ¹¹⁹	No ¹²⁰	Applied on change of record or registered title	Applied on change of record or registered title	Yes ¹²¹	No ¹²²	(a) Yes	(b)
Texas	No	No	No	Federal ¹²³	No	No	No ¹²⁴	No ¹²⁵	N/R	Applied on change of record or registered title	No	No	(a) N/A	(b)
Utah	No	No	No	Federal	No	No	Yes	No ¹²⁶	N/R	Applied on change of record or registered title	No	Yes	(a) Yes	(b)

¹¹⁸ Federal depreciation rates are computed under IRC Section 168 as it existed immediately prior to passage of Title 1, Section 101 of Job Credit and Worker Assistance Act of 2002.

¹¹⁹ Tennessee is generally a separate entity State. If doing business in Tennessee, an LLC that is disregarded for federal purposes files its own separate entity franchise excise tax return. There is one exception – an LLC whose single member is a corporation is disregarded for tax franchise excise tax purposes and is included in the return filed by its single member corporate parent.

¹²⁰ Each business entity files a Tennessee sales tax return for each of its Tennessee locations. A single-owner LLC would file a return for each of its own Tennessee locations regardless of whether it is disregarded for federal purposes.

¹²¹ If the intermediary has physical presence in Tennessee, it must register with Tennessee Department of Revenue for tax purposes. If intermediary has limited liability, such as an LLC, corporation or limited partnership, it may have to register with Tennessee Secretary of State and obtain a certificate of authority or its equivalent to do business in Tennessee.

¹²² The LLC will not be disregarded in Tennessee. It will have to file its own separate entity franchise, excise tax return. Tennessee has no general income tax applicable to individuals. Individuals are subject to an income tax on dividend and interest income.

¹²³ If the taxpayer is a corporation or LLC, then the taxpayer will use those Federal rates applicable for the Internal Revenue Code in effect from January 1, 1996 through December 31, 1996 for depreciation and cost recovery.

¹²⁴ A limited liability company is subject to Texas franchise tax, even if it is a disregarded entity for federal tax purposes.

¹²⁵ A limited liability company is subject to Texas sales and use tax, even if it is a disregarded entity for federal tax purposes.

¹²⁶ Still is an entity subject to sales tax laws.

STATE	QUESTIONS												
	Q1: Does State impose rules/restrictions in addition to federal requirements on what qualifies as “like kind” replacement property in order to qualify for a tax deferral?	Q2: If taxpayer consummates tax deferred exchange of personal property when some of like-kind property is located outside of or is moved outside State does State impose tax treatment different from federal tax deferral treatment?	Q3: Does State require special reporting of an exchange on State tax form?	Q4: If taxpayer consummates partially tax deferred exchange in which non-like property is received, is gain reportable in your State computed with reference to depreciation/cost recovery rates allowed in State or is federal cost recovery/depreciation rates used to compute gain in exchange?	Q5: Does your jurisdiction impose a withholding tax, special estimated tax or similar tax on taxable portion of any exchange proceeds?	Q6: Are tax deferral laws applicable in your State for like-kind exchanges different for resident and non-resident taxpayers in any way?	Q7: Is single owner LLC that is disregarded for federal income tax purposes also disregarded for State income tax purposes?	Q8: Is single-owner LLC that is disregarded for federal income tax purposes also disregarded for purposes of State’s sales taxes?	Q9: If State imposes real estate transfer tax, does State impose real estate transfer tax when qualified intermediary or taxpayer involved in exchange transfers ownership of limited liability company that holds record title to exchange property or is the real estate transfer tax only applied when record title to the exchange property is conveyed?	Q10: If State imposes sales or similar tax does State collect sales tax when qualified intermediary or taxpayer involved in exchange transfers ownership of membership interest in LLC that holds title to exchange property or is sales tax only applied when title to exchange property is transferred?	Q11: Does State impose special licensing, bonding or registration requirements on qualified intermediaries or exchange accommodation titleholders that provide exchange services in State?	Q12: Does State recognize special federal income tax treatment?	Q13. (a) Does your State recognize the federal income tax treatment of safe harbor parking arrangements? (b) Are there any unusual features?
Vermont	Yes ¹²⁷	N/R	Yes ¹²⁸	Federal	Yes ¹²⁹	No	No ¹³⁰	No ¹³¹	Applied on change of record or registered title	Applied on change of record or registered title	N/R	No ¹³²	(a) Yes (b)
Virginia*	No	No	No	Federal ¹³³	No	No	Yes	No ¹³⁴	Applied on change of record or registered title	Applied on change of record or registered title	2005-No 2006-Yes ¹³⁵	Yes	(a) Yes (b) N/A

¹²⁷ Must be property within the State.

¹²⁸ Lain gain return.

¹²⁹ Real estate withholding and land gain withholding.

¹³⁰ Must transfer to LLC at time of formation of LLC.

¹³¹ Question is unclear. There are, however, no special treatments for LLCs with regard to sales taxes.

¹³² Not for purposes of the transfer tax.

¹³³ **2006 response: Under VA Code §58.1-301, VA does not allow the special depreciation allowance for certain property provided for under §168(k) of the Internal Revenue Code.** 2005 response: Please note that recent changes in the Internal Revenue Code may not apply until the Virginia General Assembly advances the date of conformity.

¹³⁴ In Public Document (“P.D.”) 98-157, the Department determined that for retail sales and use tax purposes, a single member LLC is considered a separate legal entity subject to the applicable Virginia sales and use tax laws, regardless of which “check the box” elections the entity chooses for federal income tax purposes. Virginia sales and use tax law, unlike Virginia income tax law, is not tied to federal income tax law by the concept of conformity and has a specific definition of “dealer” for the purposes of the retail sales and use tax.

¹³⁵ **Upon the sale of Virginia real estate held by an out-of-state titleholder, the closing agent must obtain a registration form or certification that the transaction is not subject to Virginia income tax. See VA. Code § 58.1-317.**

STATE	QUESTIONS													
	Q1: Does State impose rules/restrictions in addition to federal requirements on what qualifies as “like kind” replacement property in order to qualify for a tax deferral?	Q2: If taxpayer consummates tax deferred exchange of personal property when some of like-kind property is located outside of or is moved outside State does State impose tax treatment different from federal tax deferral treatment?	Q3: Does State require special reporting of an exchange on State tax form?	Q4: If taxpayer consummates partially tax deferred exchange in which non-like property is received, is gain reportable in your State computed with reference to depreciation/cost recovery rates allowed in State or is federal cost recovery/depreciation rates used to compute gain in exchange?	Q5: Does your jurisdiction impose a withholding tax, special estimated tax or similar tax on taxable portion of any exchange proceeds?	Q6: Are tax deferral laws applicable in your State for like-kind exchanges different for resident and non-resident taxpayers in any way?	Q7: Is single owner LLC that is disregarded for federal income tax purposes also disregarded for State income tax purposes?	Q8: Is single-owner LLC that is disregarded for federal income tax purposes also disregarded for purposes of State’s sales taxes?	Q9: If State imposes real estate transfer tax, does State impose real estate transfer tax when qualified intermediary or taxpayer involved in exchange transfers ownership of limited liability company that holds record title to exchange property or is the real estate transfer tax only applied when record title to the exchange property is conveyed?	Q10: If State imposes sales or similar tax does State collect sales tax when qualified intermediary or taxpayer involved in exchange transfers ownership of membership interest in LLC that holds title to exchange property or is sales tax only applied when title to exchange property is transferred?	Q11: Does State impose special licensing, bonding or registration requirements on qualified intermediaries or exchange accommodation titleholders that provide exchange services in State?	Q12: Does State recognize special federal income tax treatment?	Q13. (a) Does your State recognize the federal income tax treatment of safe harbor parking arrangements? (b) Are there any unusual features?	
Washington *-no change	N/A	N/A	N/A	N/A	N/A	N/A	N/A	No ¹³⁶	¹³⁷	¹³⁸	¹³⁹	No ¹⁴⁰	(a) ¹⁴¹	(b)
West Virginia	No	No	No	Federal	No	No	Yes	Yes	Applied on change of record or registered title	Applied on change of record or registered title	No	Yes	(a) Yes	(b)
Wisconsin	No	No	No	State	No	No	Yes	No ¹⁴²	Applied on change of record or registered title	Applied on change of ownership	No	Yes	(a) Yes	(b)

¹³⁶ Each separately organized entity is treated separately for tax purposes. Washington law makes no provision for filing consolidated returns or for the elimination of inter-company transactions from the measure of tax.

¹³⁷ The real estate excise tax applies on the transfer of a controlling ownership interest (50% or more) of a limited liability company that owns real estate located in Washington.

¹³⁸ With regard to tangible personal property, sales tax does not apply on the transfer of capital assets through the sale of an ownership interest of an entity. Use tax is due on such transfers related to tangible personal property where the transferor has not paid sales or use tax on those assets.

¹³⁹ Persons performing exchange services in Washington are required to have a tax registration and pay the business and occupation tax on their income from such services. However, you will need to contact the Washington Department of Licensing regarding any special licensing requirements for persons performing exchange services.

¹⁴⁰ Washington law has no provisions for “disregarded” entities, as Washington has no state income tax.

¹⁴¹ Generally the State of Washington does not recognize the federal income tax treatment of safe harbor parking arrangements, as Washington has no income tax.

¹⁴² A separate legal entity that is disregarded for income tax purposes is separate for sales tax purposes. The owner is required to report sales and use tax on behalf of the disregarded entity.

STATE OR OTHER	QUESTIONS												
	Q1: Does State impose rules/restrictions in addition to federal requirements on what qualifies as "like kind" replacement property in order to qualify for a tax deferral?	Q2: If taxpayer consummates tax deferred exchange of personal property when some of like-kind property is located outside of or is moved outside State does State impose tax treatment different from federal tax deferral treatment?	Q3: Does State require special reporting of an exchange on State tax form?	Q4: If taxpayer consummates partially tax deferred exchange in which non-like property is received, is gain reportable in your State computed with reference to depreciation/cost recovery rates allowed in State or is federal cost recovery/depreciation rates used to compute gain in exchange?	Q5: Does your jurisdiction impose a withholding tax, special estimated tax or similar tax on taxable portion of any exchange proceeds?	Q6: Are tax deferral laws applicable in your State for like-kind exchanges different for resident and non-resident taxpayers in any way?	Q7: Is single owner LLC that is disregarded for federal income tax purposes also disregarded for State income tax purposes?	Q8: Is single-owner LLC that is disregarded for federal income tax purposes also disregarded for purposes of State's sales taxes?	Q9: If State imposes real estate transfer tax, does State impose real estate transfer tax when qualified intermediary or taxpayer involved in exchange transfers ownership of limited liability company that holds record title to exchange property or is the real estate transfer tax only applied when record title to the exchange property is conveyed?	Q10: If State imposes sales or similar tax does State collect sales tax when qualified intermediary or taxpayer involved in exchange transfers ownership of membership interest in LLC that holds title to exchange property or is sales tax only applied when title to exchange property is transferred?	Q11: Does State impose special licensing, bonding or registration requirements on qualified intermediaries or exchange accommodation titleholders that provide exchange services in State?	Q12: Does State recognize special federal income tax treatment?	Q13: (a) Does your State recognize the federal income tax treatment of safe harbor parking arrangements? (b) Are there any unusual features?
Wyoming	N/A ¹⁴³	See Q1	See Q1	Federal – see Q1	See Q1	See Q1	See Q1	No ¹⁴⁴	N/A ¹⁴⁵	Applied on change of record or registered title	¹⁴⁶	N/A	(a) See Q12 (b)
Guam	Yes ¹⁴⁷	No	No ¹⁴⁸	Federal	No	No	Yes	Yes	N/R	N/R	No	Yes	(a) Yes (b)
American Samoa													(a) (b)
Northern Marianas													(a) (b)

¹⁴³ Wyoming does not have a state income tax.

¹⁴⁴ Corporate structure is not a determinant for disregarding an entity from a sales tax liability in Wyoming.

¹⁴⁵ Wyoming does not have a real estate transfer tax.

¹⁴⁶ There is nothing in our state tax laws that addresses this question. Refer to Wyoming Secretary of State, 307-777-7378, secofstate@state.wy.us.

¹⁴⁷ Guam is allowing U.S. main land replacement property.

¹⁴⁸ Guam does not have any State tax.

STATE OR OTHER	QUESTIONS													
	Q1: Does State impose rules/restrictions in addition to federal requirements on what qualifies as “like kind” replacement property in order to qualify for a tax deferral?	Q2: If taxpayer consummates tax deferred exchange of personal property when some of like-kind property is located outside of or is moved outside State does State impose tax treatment different from federal tax deferral treatment?	Q3: Does State require special reporting of an exchange on State tax form?	Q4: If taxpayer consummates partially tax deferred exchange in which non-like property is received, is gain reportable in your State computed with reference to depreciation/cost recovery rates allowed in State or is federal cost recovery/depreciation rates used to compute gain in exchange?	Q5: Does your jurisdiction impose a withholding tax, special estimated tax or similar tax on taxable portion of any exchange proceeds?	Q6: Are tax deferral laws applicable in your State for like-kind exchanges different for resident and non-resident taxpayers in any way?	Q7: Is single owner LLC that is disregarded for federal income tax purposes also disregarded for State income tax purposes?	Q8: Is single-owner LLC that is disregarded for federal income tax purposes also disregarded for purposes of State’s sales taxes?	Q9: If State imposes real estate transfer tax, does State impose real estate transfer tax when qualified intermediary or taxpayer involved in exchange transfers ownership of limited liability company that holds record title to exchange property or is the real estate transfer tax only applied when record title to the exchange property is conveyed?	Q10: If State imposes sales or similar tax does State collect sales tax when qualified intermediary or taxpayer involved in exchange transfers ownership of membership interest in LLC that holds title to exchange property or is sales tax only applied when title to exchange property is transferred?	Q11: Does State impose special licensing, bonding or registration requirements on qualified intermediaries or exchange accommodation titleholders that provide exchange services in State?	Q12: Does State recognize special federal income tax treatment?	Q13: (a) Does your State recognize the federal income tax treatment of safe harbor parking arrangements? (b) Are there any unusual features?	
Puerto Rico	No	No	No	State	Yes ¹⁴⁹	No	No ¹⁵⁰	No ¹⁵¹	N/R	N/R	No	No ¹⁵²	(a) No ¹⁵³	(b)
U.S. Virgin Islands*- no change	No	No	No	Federal	No	No	Yes	Yes	N/A	N/A	No	Yes	(a) Yes	(b)

¹⁴⁹ If Seller is a nonresident individual or a foreign corporation not engaged in trade or business in Puerto Rico, withholding rules apply. The withholding tax rates are 10%, 20%, 25% or 29%, as may be the case.

¹⁵⁰ In Puerto Rico, LLCs, as well as partnerships, are treated as regular corporations for income tax purposes.

¹⁵¹ Puerto Rico does not have sales taxes.

¹⁵² For Puerto Rico income tax purposes, a limited liability company is treated as a corporation. In other words, it is an entity separate from its owners. Therefore, an LLC is taxed on its income, unless its owners elect corporation of individuals treatment.

¹⁵³ At this moment, there is no tax provision or case law providing for reverse exchange transactions.

AMERICAN BAR ASSOCIATION TAX SECTION – SECTION 1031 STATE SURVEY Q & A**(Final Document – 31 Out of 56 Jurisdictions Reporting)**

<u>CONTACT INFORMATION</u>		
<u>STATE/OTHER</u>	<u>NAME (*new for 2006)</u>	<u>PHONE NUMBER (*new for 2006)</u>
Alabama	Holly Hinson	334-353-9557
Alaska	Mark Graber*	907-269-6626*
Arizona	Dan Jensen*	602-716-6377*
Arkansas	David Foster	501-682-1130
California	Shane Hofeling	916-845-4581
Colorado	Bruce Nelson	303-866-6260
Connecticut	Holly Wilson*	860-297-5862*
District of Columbia	Nirmail S. Dhaliwal	202-442-6632
Florida	Gary A. Moreland	850-922-4700
Georgia	John Foster	404-417-2401
Guam	Veronica S. Quan	671-475-1814
Hawaii*	Jason Healey*	808-587-1562*
Idaho	Michelle Lanier	208-334-7530
Illinois	Brian Stocker	217-524-9478*
Indiana	Terry Griggs	317-233-5013
Iowa	Jim McNulty	515-281-6183

Kansas	Jim Weisgerber	785-296-3081
Kentucky	Office of Mark Tresh*	None given
Louisiana*	Leslie C. Strahan, 2006/Robert W. Nuzum* (7/26/06)	504-566-5209(RWN)*
Maine	Michael Mayette*	207-624-9758*
Maryland	James M. Arnie*	410-260-7445*
Massachusetts	Rosann M. Hansen	617-626-3262
Michigan	Dale Vettel*	517-373-3210*
Minnesota	John R. Haugen*	651-556-4069*
Mississippi	Joseph L. Blount	601-923-7400
Missouri	James Foster*	573-751-7791*
Montana	Brian Olsen*	406-444-2994*
Nebraska	Thomas Milburn	402-471-5814
Nevada	Gregory L. Zunino*	775-684-2080*
New Hampshire*	William Hoke*	603-271-3400*
New Jersey	Maryann Cortina*	609-292-5995*
New Mexico	Jeffrey Loubet	505-827-0776
New York	Robyn Cotrona	518-457-6713
North Carolina	Greg Radford*	919-733-8510*
North Dakota	Joseph J. Becker	701-328-3451
Ohio	James J. Baumann	614-433-7606

Oklahoma	Tony Mastin	405-521-3133
Oregon	Theresa Schuh*	503-945-8662*
Pennsylvania	Thomas D. Kimmett*	717-787-5980*
Puerto Rico	Carlos E. Serrano	787-722-0960
Rhode Island	Michael Canole	401-222-6261
South Carolina	Edward Ingram	803-898-5557
South Dakota	Tim Weber*	605-773-5131*
Tennessee	Arnold B. Clapp	615-532-8922
Texas	Lowell Dunn	512-463-4629
U.S. Virgin Islands	Tamarah Parson-Small	340-714-9301
Utah	Frank Hales	801-279-4638
Vermont	Charles Merriman	802-828-2731
Virginia	William J. White	804-371-2293
Washington	Jan Bianchi*	360-570-6147*
West Virginia	Mark S. Morton	304-558-0751
Wisconsin	Marcy Stock	608-267-5023
Wyoming	Robert C. Tompkins	307-777-5293

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