

# 1031 Exchange Myths



## 1031 Like-Kind Exchanges: Fallacy vs. Reality

Despite the fact that like-kind exchanges (LKEs) have been an established part of tax law since 1921, there are still a number of misconceptions in the marketplace about what they are and how they work. The 1031 Code is specific concerning most aspects of the law and Accruit is always standing ready with accurate, detailed information regarding any questions you may have about 1031 exchanges. If you hear something that you're not sure about or would like more details on an LKE issue, call Accruit at 1-866-397-1031.

In the meantime, we've prepared this brief, which addresses many common 1031 exchange misconceptions.

### Nine Common Myths About LKEs

#### ***A 1031 exchange requires that you swap property simultaneously.***

There is no requirement that you must exchange property simultaneously. In the most common case, the "single" or "forward delayed" exchange, property is sold and replacement property is purchased within 180 days following the sale of the relinquished property. There is also a "reverse exchange," where the replacement property is purchased before the sale of the relinquished property.

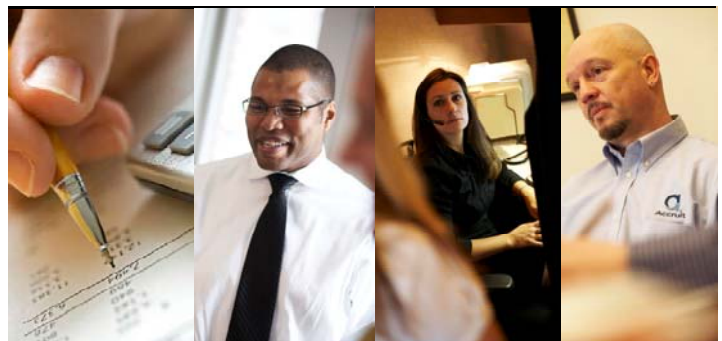
#### ***You must purchase the same type of property to meet "like-kind" rules for a 1031 exchange.***

Any real estate property is "like-kind" to all other real estate under 1031 guidelines. Therefore a mall property can be like-kind to a resort property and a high rise apartment can be like-kind to a vacant piece of land. With "personal property" (tangible or intangible business assets other than real estate, such as vehicles, manufacturing machinery, oil & gas drilling rigs, etc.), the like-kind rules are defined by General Asset Class or NAICS classifications. These rules can be broader than you'd imagine. For instance, NAICS 333120, the classification for Construction Machinery Manufacturing, is a large category that includes both bulldozers and cranes. So these two very different types of equipment are like-kind. Your Accruit representative can provide you with the guidelines you need to determine specifically what asset types are like-kind for your situation.

#### ***I can use my attorney, CPA, realtor or my equipment dealer as a Qualified Intermediary.***

A "qualified intermediary" (QI) provides Safe Harbor protection for 1031 exchanges, and this entity must be a "disinterested third party" who has not acted as your agent in any way. You can't use a lawyer with whom you've had an attorney-client relationship in the preceding two years, nor can your CPA serve as the QI if he or she has prepared your tax return within the last two years. An equipment dealer who sells you equipment is not a disinterested party as described in the tax code, so they can't be your QI, either.

If you don't employ a qualified intermediary, your exchange may be disqualified by the IRS. It's also important that you are utilizing an appropriate QI when executing an exchange through an auction house. The auctioneer isn't legally a disinterested party if they assisted you in your sale; they are by definition the agent for the buyer and/or the seller.



***Any complications with the sale of real property or a business asset can extend the 180-day rule.***

In general, there are no provisions to extend the 45-day or the 180-day rules. Nor can you extend the deadline because your 180th day is on a Sunday. In that case, you must finish the exchange on the previous Friday, even though this falls before the 180-day deadline.

A singular exception is when a presidential order extends these deadlines in cases of regional or national emergencies. A good example would be a natural disaster, like a major hurricane or widespread flooding.

***Once I have done a 1031 exchange I never have to pay my taxes.***

A 1031 exchange is a tax deferral strategy, which means taxes are deferred for an undetermined period of time. Through continued 1031 planning, it may be possible to turn this tax deferral into long-term or indefinite tax deferral.

There are also occasions under the law when a deceased person leaves property to another family member and the heirs may avoid capital gains completely. It is important to consult with a tax attorney or CPA to determine the application of the tax code in these instances.

***Vacant land doesn't qualify for a 1031 exchange.***

A 1031 exchange involves real property for real property and vacant land certainly qualifies under this description. If, for some

reason, you believe your situation represents an unusual exception, you're encouraged to consult with your tax advisor for clarification.

***A 1031 exchange defers all tax liability.***

Any cash not spent on the purchase of a replacement property during an exchange (which is called "boot") is fully taxable, regardless of your adjusted basis on the property. You may have to pay tax regardless of the 1031 exchange.

***The 1031 exchange is a tax loophole.***

LKEs have been a part of the Internal Revenue Code since 1921. They're a legal tax deferral strategy specifically crafted to aid businesses in expansion and to stimulate sales and purchases of real estate and tangible business assets. Section 1031 is not a loophole, a dodge or a way around the law - it is the law. It's the same as the standard deduction you claim for a dependent child or the depreciation deduction you take in your business each year.

***A 1031 exchange is just too good to be true.***

This myth is the most frustrating of them all. In our business we often encounter those who believe that if it sounds too good to be true, then it probably is. We respect prudent caution, but in this case the suspicion emanates from a failure to understand what a 1031 exchange actually is and does.

Yes, LKEs sound really good, and the black-letter fact of the law is that they are true.

- Auto/Truck Rental
- Construction
- Green
- Heavy Equipment
- Leasing
- Manufacturing
- Mining
- Oil & Gas
- Real Estate
- Telecom/IT
- Transportation
- Utilities
- Personal Investment



1514 Curtis St.  
 Suite 300  
 Denver CO 80202  
 o: 866-397-1031  
 f: 303-865-7399  
 www.Accruit.com  
 info@Accruit.com



**Board Member**  
**Federation of**  
**Exchange**  
**Accommodators**



Information contained in this brochure should not be construed as tax advice or as a promise of potential tax savings or reduced tax liability. For more information about Like-Kind Exchange services, contact Accruit, your tax professional, or visit the Internal Revenue Service Web site at irs.gov.