Accruit Exchange

2013, Issue #1

President's Pen

From all of us at Accruit, Happy New Year!

What a year it has been already. Across the board, our clients are seeing increased activity and reporting positive business trends, which I am happy to hear. The activity that I'm watching on behalf of our clients will be what's happening in Washington, D.C.

Kicking off the year, the President signed the American Taxpayer Relief Act of 2012 that postponed the sequester which will now go into effect March 1. The House Ways & Means Committee plans to convene a retreat in February to begin outlining Chairman Dave Camp's plans for introducing a draft tax reform bill by mid-March or early April. We will most likely see a continuing resolution for the budget processes at the end of March while the debt ceiling discussion was kicked-down the road until at least sometime in May.

As co-chair of the FEA's (Federation of Exchange Accommodators) Government Affairs Committee, I'm scheduling several trips to D.C. for meetings with members from both the Senate Finance and House Ways & Means Committees as well as follow up meetings with the Joint Committee of Taxation. Our first meeting is set for March. Following on the heels of the FEA meetings, I will join the AED (Associated Equipment Distributors) for their Washington Fly-In to further discuss tax issues directly impacting the heavy equipment industry.

Along with our Joint Business Relationship partner, David Fowler, who Leads PwC's LKE Practice, we will continue to work with industry associations as we monitor proposed legislative tax changes and rulings and their potential impact on our clients and the 1031 Industry. Make sure you read our JBR Corner article by PwC discussing Dual-Use Property.

We have a great edition for you this quarter; discussions around increased 1031 activity in our transportation sector, FDIC updates related to insured bank accounts, and Part II of last quarter's article exploring Real Estate Exchanges submitted by our subsidiary, North Star Deferred Exchange.

Needless to say we are jumping out of the gate for 2013. We wish everyone an exciting and prosperous year. Please contact me directly at 303-865-7301 or at brenta@accruit.com should you wish to discuss anything about Accruit or have ideas for my upcoming trips to D.C.

Brent Abrahm
President & CEO

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our wholly owned subsidiary

More Trucking Companies Joining 1031 LKE Cash Flow Convoy

By Stephen Doherty, Director of National Accounts

America's trucking industry is facing a daunting array of unprecedented challenges. Near the top of that list for every CEO and CFO is, "How can I increase my cash flow?" Many are discovering a source of funds that has been hiding on their own financial statements—taxes. Through a carefully-structured Section 1031 Like-Kind Exchange (LKE) Program, owners of assets used in transportation can benefit from a tax incentive that real estate investors, primarily, have relied on since 1921!

What is a 1031 Like-Kind Exchange Program?

A Section 1031 Like-Kind Exchange Program allows trucking companies to defer current taxable gain when an asset (tractor/trailer) is sold and a "like-kind" replacement asset is purchased. Consider the following example which illustrates what happens when 100 fully depreciated trucks (purchased new for $100,000 each) are then sold for $25,000 apiece:

	Without LKE	**With LKE**
Original Cost	$10,000,000	$10,000,000
Tax Depreciation Allowed	$10,000,000	$10,000,000
Tax Basis at Sale	$0	$0
Sales Price	$2,500,000	$2,500,000
Gain on Sale	$2,500,000	$2,500,000
Tax Due on Gain (40%)	$1,000,000	$0
Cash Available for Replacement Assets	**$1,500,000**	**$2,500,000**

With only 100 trucks, an LKE program would have provided 1 million "additional" dollars for the purchase of new trucks. Cash flow is significantly enhanced by reinvesting a business's own cash into new tractors and trailers instead of paying it in taxes. In so doing, trucking companies are tapping into an interest-free source of capital to keep their business rolling. It is essentially a line of credit that you control and you decide when to pay back.

Too Good to be True

Many potential beneficiaries of a 1031 Like-Kind Exchange Program express the age-old adage of, "It seems too good to be true." Nothing could be further from the truth. Since 1921, Federal tax law IRC § 1031 has permitted a taxpayer to exchange business-use assets for other like-kind business use assets without current recognition of the gain on sale. Business owners are maximizing cash reserves by minimizing the tax payment in order to reinvest in their businesses. It could accurately be characterized as one of our nation's first and greatest "economic stimulus" programs.

Safe Harbor Questions/Concerns

While LKE Programs can clearly enhance a company's cash flow—the importance of "dotting the i's and crossing the t's" cannot be overemphasized. Treasury Tax regulations require that a LKE can only be achieved when the "form" of the LKE is accomplished pursuant to very detailed rules of administration. Adherence to these rules and regs provides a company with a "safe harbor" that the IRS acknowledges and

honors—if the exchange is properly done. Some trucking companies and dealers occasionally treat trade-ins as Like-Kind Exchanges. Such transactions are being scrutinized more closely than ever and, as a result, more cases of "failure to comply" with proper form for a legitimate LKE are surfacing. We have consulted with many trucking companies who appeared to be operating outside of regulatory guidelines (safe harbor) because of how they were structuring and implementing their exchange programs. Some concerns included:

- When do the regulations require a third party to hold proceeds and disburse funds (Qualified Intermediary)?
- Does the IRS really care if an LKE Program does not follow the form of the regulations as long as the trucking company eventually gets like-kind property in return for a trade and the right documents are filed with the trucking company's taxes?
- Does a "simultaneous" (same day) exchange negate the need for a Qualified Intermediary?
- Do "trade-in" programs qualify for LKE treatment if cash is received from the dealer for trade-ins or the amount is held as a "credit" with the dealership for use in future purchases?
- Can a truck dealer act as a Qualified Intermediary?
- Do "multiple" exchanges require a Master Exchange Agreement?

These are among the many questions that companies should explore with their own tax advisors, an Accruit LKE program specialist, or Accruit's JBR Partner, PwC. At a time when taxing authorities are looking under every rock for more revenue, extra care should be taken to be sure exchanges are being done properly. "Business as usual" may not be acceptable for future IRS rulings and audit scrutiny.

Summary - "We Need New Trucks!"

The trucking industry's aggregate fleet age is at a historical high, and the resale value of existing equipment is skyrocketing. With new equipment performance mandates, higher maintenance costs, surging fuel prices, CSA 2010 safety scoring changes & challenges, and an exceptionally competitive market for hiring and retaining good drivers—the ability to purchase more new equipment will be a real differentiator in the success of trucking companies. Those with access to greater cash resources will have a distinct competitive advantage in an already hyper-competitive industry. If your company buys (vs leases) tractors and trailers and sells them at a taxable gain—perhaps deferring those taxes and rolling the full sales proceeds back into replacement equipment through a 1031 Like-Kind Exchange Program is a cash flow convoy worth considering.

Melissa Salazar

Melissa Salazar promoted to Vice-President of Finance

Denver, November 13, 2012 - Accruit is pleased to announce the promotion of Melissa Salazar to Vice-President of Finance, Accruit, LLC and Vice-President, North Star Deferred Exchange LLC

Melissa joined Accruit in December 2008, as the company's Controller and is responsible for managing the financial operations of the company. Melissa oversees all Qualified Intermediary and Qualified Escrowee banking functions and processes. With over 20 years of accounting experience, Melissa has established a proven track record of developing solid processes and procedures to ensure compliance with financial regulations. She takes pride in leading efficient, accurate and responsible financial operations. Prior to joining Accruit, Melissa held senior level positions in a range of industries including mortgage lending, advertising, manufacturing, and technology.

Melissa earned her Master's Degree in Accounting from the University of Colorado.

Like-Kind Exchange Services

Contributed by our JBR Partner, PwC

Like Kind Exchange Update on IRS Activity - Dual Use Property Issues

By David J. Fowler, Partner

On November 19, 2012, the IRS announced that it will make "dual use property" an issue of focus for the coming tax year in its soon to be published Priority Guidance Plan. This guidance will take the form of an IRS Notice. PwC recently learned that a draft of a Dual Use Property Notice has been distributed for internal review within the IRS and anticipates that a draft Notice for public comment could be issued in the next 30 to 60 days.

As you are aware, dual use property has been a factual issue that many dealers and leasing companies have to deal with as they set up their respective Like Kind Exchange Programs. This issue is an increasing focus of IRS audit activity in recent years as well. Under I.R.C. section 1031, property must be held for productive use in a trade or business or for investment to qualify for like kind deferral tax treatment. Property that is held primarily for sale in the ordinary course of business does not qualify for 1031 treatment. Generally, a taxpayer's principal motive when purchasing property governs whether or not it is deemed to be used in a trade or business or held for sale to customers. Given the IRS focus on this issue, it is increasingly important for LKE Program taxpayers to draw clear distinctions between inventory purchases and rental fleet purchases. These distinctions should be clearly documented to provide a strong audit trail.

PwC and Accruit will be actively involved in the IRS Notice process and intend to provide commentary after the draft Notice is released. We hope that appropriate safe harbors can be built in to the notice to provide clarity on the dual use issue as it involves equipment dealers. If you have any questions, comments, or would like to discuss how to get more involved in the Notice process please reach out to Brent Abrahm at (303) 865-7301 or Dave Fowler at (614) 225-8736.

Understanding a 1031 Tax Deferred Exchange of Real Estate: Part II Identification of Replacement Property

By Martin S. Edwards, Vice President & General Counsel, Accruit and President North Star Deferred Exchange LLC

After the taxpayer's relinquished property is transferred to the purchaser, the taxpayer must identify and receive replacement property within a certain time frame. The identification must take place within 45 calendar days of the transfer of the relinquished property. The replacement property must be transferred to the taxpayer within 180 days of the closing of the relinquished property or by the due date for filing (including extensions) of the taxpayer's tax return. These dates cannot be extended even if it falls on a holiday or a weekend. If multiple properties are transferred on different dates as part of a single exchange, then the applicable time periods begin on the earliest date on which any of the property is transferred. Identification of replacement property takes place in a written document that is signed by the taxpayer and is delivered in person, by mail, or by facsimile transmission to any party involved in the exchange. The rules state that the identification must be signed by the taxpayer and parties should avoid having the identification signed by a single spouse on behalf of both spouses or by an agent pursuant to a power of attorney. Replacement real property must be described specifically by using a legal description, street address, or distinguishable name. According to the regulations, for property to be constructed, identification must be in as much detail as possible. Conservative practitioners may wish to attach plans and specifications to play it safe. Businesses acting as qualified intermediaries encourage that identification be made to them, but as a technical matter, the identification can duly be made to the relinquished property buyer, the replacement property seller, or the closing agent.

The current regulations allow identification of up to three alternative properties without regard to market value. A taxpayer can choose to close on any one or more of them without reference to priorities. If, however, a taxpayer should identify more than three properties, he must close on all the properties identified unless he falls under the so-called "200 percent rule." This rule provides that an unlimited number of properties may be identified so long as the aggregate fair market value of them does not exceed 200 percent of the fair market value of the relinquished property. If a taxpayer falls within this rule, then there is no failure of the exchange, even if the taxpayer does not close on all the properties identified. One final identification-related rule is the "95 percent rule." Under this provision, even if the taxpayer exceeds the three-property rule and does not fall within the 200 percent rule, the exchange is valid to the extent that the taxpayer receives at least 95 percent of the fair market value of all the property identified. In practice, almost all taxpayers operate within the three-property rule rather than subjecting themselves to the two other, more restrictive rules. Incidental personal property that is customarily transferred as part of a particular type of commercial transaction does not need to be separately identified as long as the value of the personal property is not greater than 15 percent of the fair market value of the real property. An example of this would be the purchase of appliances as part of the purchase of an apartment building. If the building value was $1,000,000 and the appliances value was $150,000 or less, the appliances would not require specific designation. Note that the incidental property rules excuses identification of the personal property only; an analysis must still be made to determine that the actual replacement personal property is like-kind to the personal property transferred as part of the disposition of the relinquished real property. There is a tendency to disregard the value of the personal property as part of a real estate purchase when trading up. This could be a mistake if the replacement personal property is not of like-kind and/or is of equal or greater value. The ability to place personal property into exchange groups and residual groups can facilitate the accounting pertaining to personal property assets.

Treatment of Property to be Constructed

When identifying property to be constructed, great care must be taken to acquire constructed property and not construction services. If constructed property is not completed by the time of transfer to the taxpayer, only the value as of the date of transfer may be used to offset gain. Any construction completed after the date of transfer constitutes the purchase of materials and construction services and is not considered part of the exchange. If possible, taxpayers should arrange to have the builder retain ownership of the property at least until the value of the property is equal or greater than the amount held in the exchange account (but in no case beyond the 180-day exchange period). Similarly, in the case of a sale of improved property, additional improvements desired by the taxpayer should be placed on the property by the seller prior to acquisition of the replacement property, if possible. The purchase price will typically be increased by the cost of those additional improvements, which will enable the taxpayer to defer tax on those additional amounts. For example, the taxpayer expects to have $20,000 left in the exchange account upon conclusion of the purchase of replacement property. The taxpayer knows he will have certain improvements to make including installation of a new roof. Applying the $20,000 in a timely fashion toward the cost of the new roof will not help the taxpayer defer that additional amount. But should the taxpayer be able to induce the seller to put on the new roof and simply add the cost to the purchase price, the taxpayer could defer that additional sum. If the cooperation of the seller or contractor is not practical or not wanted, due to some additional favorable rules that came out in 2001, a taxpayer may engage the services of her exchange company to enable her to add the value of the desired improvements to the cost of purchasing the replacement property. These same regulations also provide means for taxpayers to effectively purchase their new property before selling their old property. This fact pattern is generally referred to as a reverse exchange since the sequence of buying and selling is reverse from the normal sequence of selling and buying within 180 days.

For more information on real estate exchanges, please contact Martin Edwards or Tracey Wilson at (312) 207-1031.

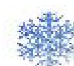
Look for Part III of this article in our next newsletter for information about actual or constructive receipt of funds and the role of the Qualified Intermediary.

Top 5 List of the Month

Top 5 Highest Snowfalls in One Year (August 1 - July 31)*

State	Inches	Weather Station	Year Ending
Alaska	974.1	Thompson Pass	1953
Oregon	822	Crater Lake National Park	1949
Utah	810.5	Alta	1984
California	746.5	Echo Summit Sierra at Tahoe	1983
Washington	621.1	Stevens Pass	1965

*Source: http://www.currentresults.com



What Does the Expiration of Temporary Unlimited FDIC Insurance Coverage for Noninterest-Bearing Transaction Accounts Mean For You?

On November 5, 2012, the Federal Deposit Insurance Corporation issued a notice reminding FDIC-insured depository institutions (IDIs) that effective January 1, 2013, noninterest-bearing transaction accounts (NIBTAs) will no longer be insured by the FDIC as a separate ownership category. That notice may be found online at www.fdic.gov. Although it was not required, the FDIC encouraged IDIs to remind their NIBTA depositors about the expiration in advance so that depositors would have adequate time to consider the impact of any change in coverage to their transaction accounts and make any necessary changes.

As you may recall, Section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) provided temporary unlimited deposit insurance coverage for NIBTAs at all FDIC-insured depository institutions from December 31, 2010 through December 31, 2012 (the Dodd-Frank Deposit Insurance Provision).
With the expiration of the Dodd-Frank Deposit Insurance Provision, as of January 1, 2013, noninterest-bearing transaction accounts are no longer insured separately from depositors' other accounts at the same IDI. Instead, noninterest-bearing transaction accounts will be added to any of a depositor's other accounts in the applicable ownership category, and the aggregate balance insured up to at least the Standard Maximum Deposit Insurance Amount (SMDIA) of $250,000, per depositor, at each separately chartered IDI.

The FDIC provided the following example regarding this important change: If after the expiration of the Dodd-Frank Deposit Insurance Provision a depositor under the single ownership category has $500,000 deposited in a noninterest- bearing transaction account and $250,000 deposited in a certificate of deposit, or total deposits of $750,000, the depositor would be insured for up to $250,000 and uninsured for the remaining balance of $500,000. There will be no distinction for deposit insurance coverage between noninterest-bearing and interest-bearing transaction accounts.

Also impacted are official checks, such as cashier's checks and money orders issued by IDIs, which are "deposits" as defined under the FDI Act (12 U.S.C. §1831(l)) and Part 330 of the FDIC's regulations. The payee of the official check (the party to whom the check is payable) or, if applicable, the party to whom the payee has negotiated the official check, is the insured party. Since official checks meet the definition of a noninterest-bearing transaction account, under the Dodd-Frank Deposit Insurance Provision the payee (or the party to whom the payee has endorsed the check) is insured by the FDIC for the full amount of the check through December 31, 2012. However, after the expiration of the Dodd-Frank Deposit Insurance Provision, if an issuing IDI were to fail, the balance of any official checks will be added to the amount of any other deposits the payee holds in the same ownership category at the issuing IDI, and the aggregate balance insured up the payee's applicable deposit insurance limit.

Additionally, funds deposited in Interest on Lawyer Trust Accounts (IOLTAs) will no longer be insured under the Dodd-Frank Deposit Insurance Provision.

For more information, go to:
www.fdic.gov/deposit/deposits/unlimited/expiration.html
or contact your insured depository institution directly.

Accruit in Action

Here are some of the conferences and events we attended last quarter:

- AssetNation 1st Annual Tubulars Conference
- Associated Equipment Distributors (AED) Annual Summit

Look for Accruit at these upcoming events:

- Ritchie Bros. Orlando Auction February 18-23
- Truckload Carriers' Association Conference March 3-6
- FEA Washington Fly-In March 12-14
- Auto Rental News Car Rental Conference April 15-16