SUPPORTING STATEMENT
Revenue Procedure 2003-39

1. **CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

Treasury and the Service have determined that it is in the best interest of sound tax administration to provide taxpayers with guidance regarding the qualification of LKE Programs under §1031. Accordingly, this revenue procedure provides safe harbors that clarify the application of §1031 and the regulations thereunder to LKE Programs. If a taxpayer meets all of the requirements for these safe harbors, the Internal Revenue Service will not challenge: (a) whether a particular exchange of relinquished property and replacement property qualifies under §1031 of the Internal Revenue Code and the regulations thereunder merely because another exchange pursuant to the LKE program fails to so qualify; (b) whether a taxpayer is in actual or constructive receipt of money or other property in the context of an LKE program; or (c) whether an intermediary is a disqualified person in the context of an LKE Program.

2. **USE OF DATA**

This information is required by the Service to provide safe harbors under §1031 to taxpayers participating in LKE Programs for federal income tax purposes.

3. **USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

There are no plans to provide electronic filing because electronic filing is not appropriate for the collection of information in this submission.

4. **EFFORTS TO IDENTIFY DUPLICATION**

We have attempted to eliminate duplication within the agency wherever possible.

5. **METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES**

Not applicable.

6. **CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES**

Not applicable.

7. **SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)**

Not applicable

8. **CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS**

Revenue Procedure 2003-39 was published in the **Internal Revenue Bulletin** on June 2, 2003 (2003-22 IRB 971).

In response to the **Federal Register** notice dated April 25, 2006 (71 F. R. 23989), we received no comments during the comment period regarding Rev. Proc. 2003-39.

9. **EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS**

Not applicable.

10. **ASSURANCE OF CONFIDENTIALITY OF RESPONSES**

Generally, tax returns and return information are confidential as required by 26 USC 6103.

11. **JUSTIFICATION OF SENSITIVE QUESTIONS**

Not applicable.

12. **ESTIMATED BURDEN OF INFORMATION COLLECTION**

We estimate that approximately 8,600 finance companies; subsidiaries of manufacturers; or banks that purchases retail leases and retail installment sale contracts from dealers of automobiles or other types of equipment participate in LKE Programs for federal income tax purposes. These taxpayers must enter into a written agreement with an intermediary in order to satisfy the requirements of section 1031. The average response time per taxpayer is estimated to be 1 hour. The total estimated burden is 8,600 hours.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

13. **ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS**

As suggested by OMB, our **Federal Register** notice dated April 25, 2006

requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

14. **ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT**

Not applicable.

15. **REASONS FOR CHANGE IN BURDEN**

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

16. **PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION**

Not applicable.

17. **REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE**

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the revenue procedure sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. **EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB 83-I**

Not applicable.

Note: The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2003–39

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2003–39, section 1031 LKE (Like-Kind Exchanges) Auto Leasing Programs.

DATES: Written comments should be received on or before June 26, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Section 1031 LKE (Like-Kind Exchanges) Auto Leasing Programs.

OMB Number: 1545–1834.

Revenue Procedure Number: Revenue Procedure 2003–39.

Abstract: Revenue Procedure 2003–39 provides safe harbors for certain aspects of the qualification under § 1031 of certain exchanges of property pursuant to LKE Programs for federal income tax purposes.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 8,600.

Estimated Average Time Per Respondent: 1 hour.

Estimated Total Annual Reporting Burden: 8,600.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the

information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 17, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–6129 Filed 4–24–06; 8:45 am]

BILLING CODE 4830–01–P

Part III. Administrative, Procedural, and Miscellaneous

Earned Income Credit and Tribal Child Placements

Notice 2003–28

This notice clarifies the application of the earned income credit for a taxpayer caring for a child placed with the taxpayer by an Indian tribal government (ITG) or an organization an ITG has authorized to place Indian children. Section 32(a)(1) provides for an earned income credit in the case of an eligible individual. Section 32(c)(1)(A)(i) defines an eligible individual as an individual who has a qualifying child for the taxable year. Section 32(c)(3) defines a qualifying child as one who satisfies a relationship test, a residency test, and an age test. Under § 32(c)(3)(B)(i)(III), an eligible foster child satisfies the relationship test. Pursuant to § 32(c)(3)(B)(iii), for taxable years beginning after December 31, 1999, an eligible foster child includes a child placed with the taxpayer by an authorized placement agency whom the taxpayer cares for as the taxpayer's own child (and, for taxable years beginning before January 1, 2002, who has the same principal place of abode as the taxpayer for the taxpayer's entire taxable year). For purposes of § 32(c)(3)(B)(iii), an authorized placement agency includes an ITG and also includes an organization an ITG has authorized to place Indian children (Indian tribal organization). Thus, for taxable years beginning after December 31, 1999, a child placed with a taxpayer by an ITG or an Indian tribal organization qualifies as an eligible foster child, provided the taxpayer cares for the child as his or her own, and, for taxable years beginning before January 1, 2002, the child has the same principal place of abode as the taxpayer for the taxpayer's entire taxable year.

The principal author of this notice is Sylvia F. Hunt of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Ms. Hunt at (202) 622–6080 (not a toll-free call).

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26 CFR 1.1031(a)-1: Property held for productive use in trade or business or for investment.
1.1031(k)-1: Treatment of deferred exchanges.

Rev. Proc. 2003–39

SECTION 1. PURPOSE

This revenue procedure provides safe harbors with respect to programs involving ongoing exchanges of tangible personal property using a single intermediary, as described in section 3.02 of this revenue procedure (an "LKE Program").

SECTION 2. BACKGROUND

.01 Section 1031(a)(1) provides that no gain or loss is recognized on the exchange of property held for productive use in a trade or business or for investment ("relinquished property") if the property is exchanged solely for property of like kind that is to be held either for productive use in a trade or business or for investment ("replacement property").

.02 Section 1031(a)(3) provides that replacement property received by the taxpayer is not treated as like-kind property if it: (a) is not identified as property to be received in the exchange on or before the day that is 45 days after the date on which the taxpayer transfers the relinquished property (the "45-day identification period"); or (b) is received after the earlier of the date that is 180 days after the date on which the taxpayer transfers the relinquished property, or the due date (determined with regard to extensions) for the transferor's federal income tax return for the year in which the transfer of the relinquished property occurs.

.03 Section 1.1031(k)–1(a) defines a deferred exchange as an exchange in which, pursuant to an agreement, the taxpayer transfers relinquished property and subsequently receives replacement property. In order to constitute a deferred exchange, the transaction must be an exchange (*i.e.*, a transfer of property for property, as distinguished from a transfer of property for money).

.04 Section 1.1031(k)–1(c)(1) provides that any replacement property that is received by the taxpayer before the end of the 45-day identification period will be treated in all events as identified before the end of the 45-day identification period.

.05 Section 1.1031(k)–1(f)(1) provides that if a taxpayer actually or constructively receives money or other property in the full amount of the consideration for the relinquished property before the taxpayer actually receives the replacement property, the transaction will constitute a sale and not a deferred exchange, even though the taxpayer may ultimately receive replacement property.

.06 Section 1.1031(k)–1(g) sets forth safe harbors involving a qualified escrow account, a qualified trust, or a qualified intermediary, the use of which will result in a determination that the taxpayer is not in actual or constructive receipt of money or other property for purposes of § 1031 and the regulations.

.07 Section 1.1031(k)–1(g)(4)(iii) requires that, for an intermediary to be a qualified intermediary, the intermediary must enter into a written "exchange" agreement with the taxpayer and, as required by the exchange agreement, acquire the relinquished property from the taxpayer, transfer the relinquished property, acquire the replacement property, and transfer the replacement property to the taxpayer.

.08 Section 1.1031(k)–1(g)(4)(iv) provides that the intermediary will be treated as acquiring or transferring property, as the case may be, if the intermediary (either on its own behalf or as the agent of any party to the transaction) enters into an agreement for the acquisition or transfer of property and, pursuant to that agreement, the property is transferred.

.09 Section 1.1031(k)–1(g)(4)(v) provides that an intermediary will be treated as entering into an agreement for the acquisition or transfer of property if the taxpayer's rights in the agreement are assigned to the intermediary, and the other parties to the acquisition or transfer agreement are notified in writing of the assignment on or before the date of the relevant transfer of property (the "Assignment Safe Harbor"). Under the Assignment Safe Harbor, there is no requirement that the taxpayer also assign or delegate its obligations arising under the agreement.

.10 Section 1.1031(k)–1(g)(6) provides that an agreement with an escrow holder, trustee or qualified intermediary must expressly limit the taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property held in the qualified escrow or trust or by the qualified intermediary.

.11 Sections 1.1031(k)–1(g)(3) and (4) provide that the application of the safe harbor requires that in the case of a qualified escrow account, a qualified trust, or a qualified intermediary, the escrow holder, trustee, or intermediary must not be a "disqualified person."

.12 Section 1.1031(k)–1(k)(2) provides that a person that is the agent of the taxpayer at the time of the transaction is a disqualified person. For this purpose, a person who has acted as the taxpayer's employee, attorney, accountant, investment banker or broker, or real estate agent or broker within the two-year period ending on the date of the transfer of the first of the relinquished properties is treated as an agent of the taxpayer at the time of the transaction. Solely for purposes of §1.1031–1(k)(2), performance of the following services will not be taken into account: (a) services for the taxpayer with respect to exchanges of property intended to qualify for nonrecognition of gain or loss under § 1031; and (b) routine financial, title insurance, escrow, or trust services for the taxpayer by a financial institution, title insurance company, or escrow company.

.13 The Service and Treasury Department have determined that it is in the best interest of sound tax administration to provide taxpayers with guidance regarding the qualification of LKE Programs under § 1031. Accordingly, this revenue procedure provides safe harbors that clarify the application of § 1031 and the regulations thereunder to LKE Programs.

SECTION 3. SCOPE AND DEFINITIONS

.01 *Exclusivity.* This revenue procedure provides safe harbors for certain aspects of the qualification under § 1031 of certain exchanges of property pursuant to LKE Programs. The principles set forth in sections 4 through 6 of this revenue procedure have no application to any federal income tax determinations other than determinations that involve LKE Programs qualifying for one or more of the safe harbors. For a transaction to qualify under § 1031, it must also satisfy the requirements of § 1031 for which safe harbors are not provided in this revenue procedure (*e.g.*, whether property involved in an exchange is considered like-kind property within the meaning of § 1031).

.02 *LKE Program.* For purposes of this revenue procedure, an "LKE Program" is an ongoing program involving multiple exchanges of 100 or more properties. Although LKE Programs may differ in various ways, an LKE Program must have all of the following characteristics:

(1) The taxpayer regularly and routinely enters into agreements to sell tangible personal property as well as agreements to buy tangible personal property;

(2) The taxpayer uses a single, unrelated intermediary to accomplish the exchanges in the LKE Program;

(3) The taxpayer and the intermediary enter into a written agreement ("master exchange agreement");

(4) The master exchange agreement expressly limits the taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property held by the intermediary as provided in § 1.1031(k)–1(g)(6);

(5) In the master exchange agreement, the taxpayer assigns to the intermediary the taxpayer's rights (but not necessarily its obligations) in some or all of its existing and future agreements to sell relinquished property and/or to purchase replacement property;

(6) The taxpayer provides written notice of the assignment to the other party to each existing and future agreement to sell relinquished property and/or to purchase replacement property;

(7) The taxpayer

(a) implements a process that identifies potential replacement property or properties before the end of the identification period for the relinquished property or group of relinquished properties of which it is disposing in each exchange,

(b) complies with the identification requirement by receiving replacement property or properties before the end of the 45-day identification period, or

(c) satisfies the identification requirements by a combination of the approaches in (a) and (b);

(8) The taxpayer implements a process for collecting, holding, and disbursing funds (which may include the use of joint taxpayer and intermediary bank accounts, or accounts in the name of a third party for the benefit of both the taxpayer and the intermediary) that ensures that the intermediary controls the receipt, holding, and disbursement of all funds to which the intermediary is entitled (*i.e.*, proceeds from the sale of relinquished properties);

(9) Relinquished property or properties that are transferred are matched with replacement property or properties that are received in order to determine the gain, if any, recognized on the disposition of the relinquished property and to determine the basis of the replacement property; and

(10) The taxpayer recognizes gain or loss on the disposition of relinquished properties that are not matched with replacement properties, and the taxpayer takes a cost basis in replacement properties that are received but not matched with relinquished properties.

A taxpayer may conduct more than one LKE Program simultaneously. In such a case, each LKE Program is evaluated separately for purposes of determining whether that LKE Program qualifies for the safe harbors of this revenue procedure.

.03 *No Inference.* The Service recognizes that exchanges of property pursuant to LKE Programs may qualify for nonrecognition treatment under § 1031 although they fall outside the safe harbors provided in this revenue procedure. No inference is intended with respect to the federal income tax treatment of transfers of relinquished property and acquisitions of replacement property that do not satisfy the terms of the safe harbors provided in this revenue procedure.

.04 *Scope of Safe Harbors.* Each of the paragraphs under sections 4, 5, and 6 of this revenue procedure is considered a separate and distinct safe harbor. Therefore, a taxpayer who fails to qualify for the benefits of one safe harbor may nevertheless qualify for the benefits of another safe harbor.

SECTION 4. EXCHANGES OF RELINQUISHED PROPERTY AND REPLACEMENT PROPERTY

.01 *Separate and Distinct Exchanges.* In the case of an LKE Program, the taxpayer's transfer of each relinquished property or group of relinquished properties and the taxpayer's corresponding receipt of each replacement property or group of replacement properties with which the relinquished property or group of relinquished properties has been matched by the taxpayer is treated as a separate and distinct exchange for purposes of § 1031. The determination of whether a particular exchange quali-

fies under § 1031 is made without regard to any other exchange. Thus, if a particular exchange of a relinquished property or group of relinquished properties for a replacement property or group of replacement properties pursuant to an LKE Program fails to qualify under § 1031, such failure will not affect the application of § 1031 to any other exchange pursuant to the LKE Program.

.02 *45-day Identification Period.* Replacement property that is received within the 45-day identification period or that is otherwise properly identified as provided in § 1.1031(k)–1(c) is treated as satisfying the requirement of § 1031(a)(3) that replacement property be identified, notwithstanding that it may not be matched with relinquished property until after the end of the 45-day identification period. The replacement property must, however, be matched no later than the due date (determined with regard to extensions) of the taxpayer's return.

SECTION 5. ACTUAL OR CONSTRUCTIVE RECEIPT OF MONEY OR OTHER PROPERTY

For purposes of this section, any requirement that the taxpayer transfer money or other property to the qualified intermediary will be deemed to be satisfied if the amount of money held by the qualified intermediary and the amount of money in any joint account (as described in § 5.02 of this revenue procedure) equals or exceeds the amount of proceeds from the sale of relinquished property (including the amount that is required to be transferred by the taxpayer) that has not yet been used to acquire replacement property.

.01 *Receipt of Checks and Other Negotiable Instruments.* A taxpayer engaged in an LKE Program will not be considered to be in actual or constructive receipt of money or other property as a result of processing a check or other negotiable instrument made payable to a person other than the taxpayer if:

(1) The check or other negotiable instrument has not been endorsed by the person to whom the check or other negotiable instrument is made payable,

(2) The person to whom the check or other negotiable instrument is made payable is not a disqualified person as defined in § 1.1031(k)–1(k); and

(3) The check or other negotiable instrument is forwarded to or for the benefit of a qualified intermediary or deposited into an account in the name of the qualified intermediary, a joint account, or an account in the name of a third party (other than a disqualified person as defined in § 1.1031(k)–1(k)) for the benefit of both the taxpayer and the qualified intermediary.

.02 *Joint Accounts.* A taxpayer engaged in an LKE Program will not be considered to be in actual or constructive receipt of proceeds from the sale of relinquished property deposited into or held in a joint bank, trust, escrow, or similar account in the name of the taxpayer and the qualified intermediary, or in an account in the name of a third party (other than a disqualified person as defined in § 1.1031(k)–1(k)) for the benefit of both the taxpayer and the qualified intermediary, if:

(1) The account is used to collect, hold, and/or disburse proceeds arising from the sale of relinquished property for the benefit of the qualified intermediary;

(2) The agreement setting forth the terms and conditions with respect to the account requires authorization from the qualified intermediary to transfer proceeds from the sale of relinquished properties out of the account; and

(3) The agreement setting forth the terms of the taxpayer's and qualified intermediary's rights with respect to, or beneficial interest in, the account expressly limits the taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of proceeds from the sale of relinquished property held in the joint account as provided in § 1.1031(k)–1(g)(6).

The account may also be used by the parties for other purposes provided that such use does not undermine the qualified intermediary's right to control the proceeds from the sale of relinquished property.

.03 *Funds Netting.* A taxpayer engaged in an LKE Program will not be considered to be in actual or constructive receipt of money or other property as a result of transferring relinquished property solely because an amount owed by the taxpayer to the buyer (other than a lease security deposit) is netted against the sales price of the relinquished property, provided that, as required by the master exchange agreement, funds equal to the full amount of sales proceeds from the relinquished property are transferred to or for the benefit of the qualified intermediary by the opening of the next day's business. Likewise, a taxpayer acquiring replacement property in a like-kind exchange will not be considered to be in actual or constructive receipt of money or other property solely because an amount owed by the seller to the taxpayer is netted against the purchase price of the property and the qualified intermediary transfers to the taxpayer funds in an amount equal to the amount owed by the seller to the taxpayer so that the qualified intermediary expends the full amount of the purchase price obligation for the replacement property.

.04 *Taxpayer As Lender to Purchaser.* If a taxpayer that is engaged in an LKE Program lends money to the buyer for the purchase of the taxpayer's relinquished property, the taxpayer's receipt of the buyer's promissory note or other evidence of indebtedness will not be considered actual or constructive receipt of money or other property if:

(1) The taxpayer makes similar loans in the ordinary course of its business operations;

(2) The buyer is not obligated to obtain financing from the taxpayer for the purchase of the relinquished property, but rather is free to borrow the funds from another lender;

(3) The taxpayer's loan to the buyer is an arm's-length transaction at the prevailing market terms; and

(4) As required by the master exchange agreement, the taxpayer promptly transfers funds equal to the loan proceeds (plus a market rate of interest on such amount for the period between the date of the sale of the relinquished property and the date of the transfer of the loan proceeds to the qualified intermediary) to or for the benefit of the qualified intermediary.

05. *Application of Lease Security Deposit To Purchase Price.* In the case of a taxpayer that engages in an LKE Program and is the lessor of the property being purchased by the buyer-lessee, the buyer-lessee's application of its lease security deposit to the purchase price of the relinquished property will not be considered actual or constructive receipt of money or other property provided that, as required by the master exchange agreement, the taxpayer promptly transfers funds equal to the lease security deposit (plus a market rate of interest on such amount for the period between the date of the sale of the relin-

quished property and the date of the transfer of the security deposit to the qualified intermediary) to or for the benefit of the qualified intermediary.

SECTION 6. DEFINITION OF QUALIFIED INTERMEDIARY

.01 *In General.* For purposes of determining whether an intermediary is a disqualified person in the context of an LKE Program, the intermediary will not fail to be a qualified intermediary merely because the intermediary:

(1) is assigned the taxpayer's rights in its agreements to sell relinquished properties that ultimately are not matched with replacement properties under the taxpayer's LKE Program;

(2) is assigned the taxpayer's rights in its agreements to buy replacement properties that ultimately are not matched with relinquished properties under the taxpayer's LKE Program;

(3) receives funds with respect to the transfer of relinquished property that ultimately is not matched with replacement property under the taxpayer's LKE Program; or

(4) pays funds with respect to the acquisition of replacement property that ultimately is not matched with relinquished property under the taxpayer's LKE Program.

.02 *Assignment Safe Harbor.* The taxpayer's assignment in the master exchange agreement to the intermediary of the taxpayer's rights (but not necessarily its obligations) in some or all of its existing and future agreements to sell relinquished property and/or to purchase replacement property, and the taxpayer's written notice of the assignment to the other party to each agreement to sell relinquished property and/or to purchase replacement property on or before the date of the relevant transfer of property, will be effective to satisfy the Assignment Safe Harbor and notice requirement under § 1.1031(k)–1(g)(4)(v).

SECTION 7. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1834.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in this revenue procedure are in sections 5 and 6. This information is required by the Service to provide safe harbors under § 1031 to taxpayers participating in LKE Programs for federal income tax purposes. The likely respondents are finance companies; subsidiaries of manufacturers; or banks that purchases retail leases and retail installment sale contracts from dealers of automobiles or other types of equipment.

The estimated total annual reporting and recordkeeping burden is 8,600 hours.

The estimated annual burden per respondent/recordkeeper varies from 45 minutes to 75 minutes, depending on individual circumstances, with an estimated average of 60 minutes. The estimated number of respondents and recordkeepers is 8,600.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Elizabeth Kaye of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Ms. Kaye at (202) 622–4920 (not a toll-free call).

Amendments

§ 702(c)(8), (c)(10):

Code Sec. 1023(h)(1) and (2)(A) by striking out s of determining gain" and inserting in place purposes of determining gain and applying this ective as if such amendment was included in made by P.L. 94-455 [Sec. 2005(f)(1) (effective nded by P.L. 95-600, Sec. 515(6), applicable to edents dying after December 31, 1979].

§ 702(c)(2)(A), (c)(10):

de Sec. 1023(h)(3), above, effective as if such was included in amendments made by P.L. 2005(f)(1) (effective date), as amended by P.L. 515(6), applicable to estates of decedents dying ber 31, 1979].

§ 702(c)(4), (c)(10):

de Sec. 1023(h)(4), above, effective as if such was included in amendments made by P.L. 2005(f)(1) (effective date), as amended by P.L. 515(6), applicable to estates of decedents dying ber 31, 1979].

§ 2005(a)(2), (f)(1):

ated former Code Sec. 1023 to be Code Sec. 1024 ew Code Sec. 1023(h) to read as above, effective f decedents dying after December 31, 1979, as P.L. 95-600, § 515(6).

[Sec. 1023(i)]

ATIONS.—The Secretary shall prescribe such reg- nay be necessary to carry out the purposes of this

Amendments

§ 2005(a)(2), (f)(1):

ated former Code Sec. 1023 to be Code Sec. 1024 new Code Sec. 1023(i) to read as above, effective of decedents dying after December 31, 1979, as P.L. 95-600, § 515(6).

e applied in reduction of basis of stock, see

section 511 of the Merchant Marine Act,

5, § 1901(a)(127):

out Code Sec. 1024(4) as redesignated by P.L. 2005(a)(2), effective for taxable years beginning mber 31, 1976. Prior to striking, Code Sec. 1024(4) lows:

rules applicable in case of payments in violation of roduction Act of 1950, as amended, see section 405 t.

55, § 2005(a)(2), (f)(1)

nated former Code Sec. 1023 to be Code Sec. 1024 in respect of decedents dying after December 31, mended by P.L. 95-600, Sec. 515(6).

72, § 225(j)(1):

tion above was renumbered from 1022 to 1023.

BLE EXCHANGES

vestment.

[Sec. 1031]

SEC. 1031. EXCHANGE OF PROPERTY HELD FOR PRODUCTIVE USE OR INVESTMENT.

[Sec. 1031(a)]

(a) NONRECOGNITION OF GAIN OR LOSS FROM EXCHANGES SOLELY IN KIND.—

(1) IN GENERAL.—No gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment.

(2) EXCEPTION.—This subsection shall not apply to any exchange of—

(A) stock in trade or other property held primarily for sale,

(B) stocks, bonds, or notes,

(C) other securities or evidences of indebtedness or interest,

(D) interests in a partnership,

(E) certificates of trust or beneficial interests, or

(F) choses in action.

For purposes of this section, an interest in a partnership which has in effect a valid election under section 761(a) to be excluded from the application of all of subchapter K shall be treated as an interest in each of the assets of such partnership and not as an interest in a partnership.

(3) REQUIREMENT THAT PROPERTY BE IDENTIFIED AND THAT EXCHANGE BE COMPLETED NOT MORE THAN 180 DAYS AFTER TRANSFER OF EXCHANGED PROPERTY.—For purposes of this subsection, any property received by the taxpayer shall be treated as property which is not like-kind property if—

(A) such property is not identified as property to be received in the exchange on or before the day which is 45 days after the date on which the taxpayer transfers the property relinquished in the exchange, or

(B) such property is received after the earlier of—

(i) the day which is 180 days after the date on which the taxpayer transfers the property relinquished in the exchange, or

(ii) the due date (determined with regard to extension) for the transferor's return of the tax imposed by this chapter for the taxable year in which the transfer of the relinquished property occurs.

Amendments

P.L. 101-508, § 11703(d)(1):

Act Sec. 11703(d)(1) amended Code Sec. 1031(a)(2) by adding at the end thereof a new sentence to read as above.

The above amendment applies to transfers after July 18, 1984.

P.L. 99-514, § 1805(d):

Act Sec. 1805(d) amended Code Sec. 1031(a)(3)(A) by striking out "before the day" and inserting in lieu thereof "on or before the day".

The above amendment is effective as if included in the provision of P.L. 98-369 to which such amendment relates.

P.L. 98-369, § 77(a):

Act Sec. 77(a) amended Code Sec. 1031(a) to read as above. Prior to amendment, Code Sec. 1031(a) read as follows:

(a) Nonrecognition of Gain or Loss From Exchanges Solely in Kind.—No gain or loss shall be recognized if property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale, no stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment.

The above amendment applies to transfers made after July 18, 1984, in tax years ending after such date.

Special rules appear below.

P.L. 98-369, § 77(b)(2)-(5) provides:

(2) Binding Contract Exception for Transfer of Partnership Interests.—Paragraph (2)(D) of section 1031(a) of the Internal Revenue Code of 1954 (as amended by subsection (a)) shall not apply in the case of any exchange pursuant to a

binding contract in effect on March 1, 1984, and at all times thereafter before the exchange.

(3) Requirement That Property Be Identified Within 45 Days and That Exchange Be Completed Within 180 Days.—Paragraph (3) of section 1031(a) of the Internal Revenue Code of 1954 (as amended by subsection (a)) shall apply—

(A) to transfers after the date of the enactment of this Act, and

(B) to transfers on or before such date of enactment if the property to be received in the exchange is not received before January 1, 1987.

In the case of any transfer on or before the date of the enactment of this Act which the taxpayer treated as part of a like-kind exchange, the period for assessing any deficiency of tax attributable to the amendment made by subsection (a) shall not expire before January 1, 1988.

(4) Special Rule Where Property Identified in Binding Contract.—If the property to be received in the exchange is identified in a binding contract in effect on June 13, 1984, and at all times thereafter before the transfer, paragraph (3) shall be applied—

(A) by substituting "January 1, 1989" for "January 1, 1987", and

(B) by substituting "January 1, 1990" for "January 1, 1988".

(5) Special Rule for Like-Kind Exchange of Partnership Interests.—Paragraph (2)(D) of section 1031(a) of the Internal Revenue Code of 1954 (as amended by subsection (a)) shall not apply to any exchange of an interest as general partner pursuant to a plan of reorganization of ownership interest under a contract which took effect on March 29, 1984, and which was executed on or before March 31, 1984, but only if all the exchanges contemplated by the reorganization plan are completed on or before December 31, 1984.

[Sec. 1031(b)]

(b) GAIN FROM EXCHANGES NOT SOLELY IN KIND.—If an exchange would be within the provisions of subsection (a), of section 1035(a), of section 1036(a), or of section 1037(a), if it were not for the fact that the property received in exchange consists not only of property permitted by such provisions to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

Amendments

P.L. 86-346, § 102(c):

Amended Code Sec. 1031(b) by striking out "the provisions of subsection (a), of section 1035(a), or of section 1036(a)," and by substituting "the provisions of subsection (a), of section 1035(a), of section 1036(a), or of section 1037(a).".

The amendment is effective for taxable years ending after 9-22-59.

[Sec. 1031(c)]

(c) LOSS FROM EXCHANGES NOT SOLELY IN KIND.—If an exchange would be within the provisions of subsection (a), of section 1035(a), of section 1036(a), or of section 1037(a), if it were not for the fact that the property received in exchange consists not only of property permitted by such provisions to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

Amendments

P.L. 86-346, § 102(d):

Amended Code Sec. 1031(c) by striking out "the provisions of subsection (a), of section 1035(a), or of section 1036(a)," and by substituting "the provisions of subsection (a), of section 1035(a), of section 1036(a), or of section 1037(a).".

The amendment is effective for taxable years ending after 9-22-59.

[Sec. 1031(d)]

(d) BASIS.—If property was acquired on an exchange described in this section, section 1035(a), section 1036(a), or section 1037(a), then the basis shall be the same as that of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized on such exchange. If the property so acquired consisted in part of the type of property permitted by this section, section 1035(a), section 1036(a), or section 1037(a), to be received without the recognition of gain or loss, and in part of other property, the basis provided in this subsection shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such other property an amount equivalent to its fair market value at the date of the exchange. For purposes of this section, section 1035(a), and section 1036(a), where as part of the consideration to the taxpayer another party to the exchange assumed (as determined under section 357(d)) a liability of the taxpayer, such assumption shall be considered as money received by the taxpayer on the exchange.

Amendments

P.L. 106-36, § 3001(c)(2)(A)-(B):

Act Sec. 3001(c)(2)(A)-(B) amended the last sentence of Code Sec. 1031(d) by striking "assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability" and inserting "assumed (as determined under section 357(d)) a liability of the taxpayer", and by striking "or acquisition (in the amount of the liability)" following "such assumption".

The above amendment applies to transfers after October 18, 1998.

P.L. 86-346, § 102(e):

Amended the first and second sentences of Code Sec. 1031(d) by striking out "this section, section 1035(a), or section 1036(a)," and by substituting "this section, section 1035(a), section 1036(a), or section 1037(a),"

The amendment is effective for taxable years ending after 9-22-59.

P.L. 85-866, § 44(a):

Amended the first sentence of subsection (d) of Sec. 1031 to read as above. Effective 1-1-54. Prior to amendment, the first sentence of subsection (d) read as follows: "If property was acquired on an exchange described in this section, section 1035 (a), or section 1036 (a), then the basis shall be the same as that of the property exchanged decreased in the amount of any money received by the taxpayer and increased in the amount of gain to the taxpayer that was recognized on such exchange."

Amended the second sentence of subsection (d) of Sec. 1031 by striking out the word "paragraph" where it appeared preceding the phrase "shall be allocated" and substituted the word "subsection".

(e) EXCHANGES OF LIVESTOCK OF different sexes are not property of a li

Amendments

P.L. 91-172, § 212(c):

Amended Code Sec. 1031 by adding subsecti to taxable years to which the 1954 Code appli

(f) SPECIAL RULES FOR EXCHANGES

(1) IN GENERAL.—If—

(A) a taxpayer exchange

(B) there is nonrecogniti the exchange of such propert

(C) before the date 2 y exchange—

(i) the related perso

(ii) the taxpayer di person which was of like

there shall be no nonrecognition o exchange; except that any gain or taken into account as of the date

(2) CERTAIN DISPOSITIONS NO shall not be taken into account a

(A) after the earlier of t

(B) in a compulsory or i exchange occurred before th

(C) with respect to whi the exchange nor such dispo income tax.

(3) RELATED PERSON.—For person bearing a relationship to t

(4) TREATMENT OF CERTAIN T is part of a transaction (or series

Amendments

P.L. 101-508, § 11701(h):

Act Sec. 11701(h) amended Code Sec. 103 ing "section 267(b)", and inserting "sec 707(b)(1))".

The above amendment is effective w transfers after August 3, 1990.

P.L. 101-239, § 7601(a):

Act Sec. 7601(a) amended Code Sec. 1031 l end thereof new subsection (f) to read as abo

(g) SPECIAL RULE WHERE SUBSTA

(1) IN GENERAL.—If paragr period set forth in subsection (f) period.

(2) PROPERTY TO WHICH SUB any period during which the h diminished by—

(A) the holding of a pu

(B) the holding by ano

(C) a short sale or any

[Sec. 1031(e)]

(e) EXCHANGES OF LIVESTOCK OF DIFFERENT SEXES.—For purposes of this section, livestock of different sexes are not property of a like kind.

Amendments

P.L. 91-172, § 212(c)

Amended Code Sec. 1031 by adding subsection (e). Applies to taxable years to which the 1954 Code applies.

[Sec. 1031(f)]

(f) SPECIAL RULES FOR EXCHANGES BETWEEN RELATED PERSONS.—

(1) IN GENERAL.—If—

(A) a taxpayer exchanges property with a related person,

(B) there is nonrecognition of gain or loss to the taxpayer under this section with respect to the exchange of such property (determined without regard to this subsection), and

(C) before the date 2 years after the date of the last transfer which was part of such exchange—

(i) the related person disposes of such property, or

(ii) the taxpayer disposes of the property received in the exchange from the related person which was of like kind to the property transferred by the taxpayer,

there shall be no nonrecognition of gain or loss under this section to the taxpayer with respect to such exchange, except that any gain or loss recognized by the taxpayer by reason of this subsection shall be taken into account as of the date on which the disposition referred to in subparagraph (C) occurs.

(2) CERTAIN DISPOSITIONS NOT TAKEN INTO ACCOUNT.—For purposes of paragraph (1)(C), there shall not be taken into account any disposition—

(A) after the earlier of the death of the taxpayer or the death of the related person,

(B) in a compulsory or involuntary conversion (within the meaning of section 1033) if the exchange occurred before the threat or imminence of such conversion, or

(C) with respect to which it is established to the satisfaction of the Secretary that neither the exchange nor such disposition had as one of its principal purposes the avoidance of Federal income tax.

(3) RELATED PERSON.—For purposes of this subsection, the term "related person" means any person bearing a relationship to the taxpayer described in section 267(b) or 707(b)(1).

(4) TREATMENT OF CERTAIN TRANSACTIONS.—This section shall not apply to any exchange which is part of a transaction (or series of transactions) structured to avoid the purposes of this subsection.

Amendments

P.L. 101-508, § 11701(h).

Act Sec. 11701(h) amended Code Sec. 1031(f)(3) by striking "section 267(b)" and inserting "section 267(b) or 707(b)(1)".

The above amendment is effective with respect to transfers after August 3, 1990.

P.L. 101-239, § 7601(a)

Act Sec. 7601(a) amended Code Sec. 1031 by adding at the end thereof new subsection (f) to read as above.

The above amendment applies to transfers after July 10, 1989, in tax years ending after such date, except as provided in Act Sec. 7601(b)(2), below.

Act Sec. 7601(b)(2) provides:

(2) BINDING CONTRACT.—The amendments made by this section shall not apply to any transfer pursuant to a written binding contract in effect on July 10, 1989, and at all times thereafter before the transfer.

[Sec. 1031(g)]

(g) SPECIAL RULE WHERE SUBSTANTIAL DIMINUTION OF RISK.—

(1) IN GENERAL.—If paragraph (2) applies to any property for any period, the running of the period set forth in subsection (f)(1)(C) with respect to such property shall be suspended during such period.

(2) PROPERTY TO WHICH SUBSECTION APPLIES.—This paragraph shall apply to any property for any period during which the holder's risk of loss with respect to the property is substantially diminished by—

(A) the holding of a put with respect to such property,

(B) the holding by another person of a right to acquire such property, or

(C) a short sale or any other transaction.

Amendments

P.L. 101-239, § 7601(a):

Act Sec. 7601(a) amended Cude Sec. 1031 by adding at the end thereof a new subsection (g) to read as above.

The above amendment applies to transfers after July 10, 1989, in tax years ending after such date, except as provided in Act Sec. 7601(b)(2), below.

Act Sec. 7601(b)(2) provides:

(2) BINDING CONTRACT.—The amendments made by [illegible] section shall not apply to any transfer pursuant to a wri[illegible] binding contract in effect on July 10, 1989, and at all t[illegible] thereafter before the transfer.

[Sec. 1031(h)]

(h) SPECIAL RULES FOR FOREIGN REAL AND PERSONAL PROPERTY.—For purposes of this section—

(1) REAL PROPERTY.—Real property located in the United States and real property locat[illegible] outside the United States are not property of a like kind.

(2) PERSONAL PROPERTY.—

(A) IN GENERAL:—Personal property used predominantly within the United States and personal property used predominantly outside the United States are not property of a like kind.

(B) PREDOMINANT USE.—Except as provided in subparagraph (C) and (D), the predominant use of any property shall be determined based on—

(i) in the case of the property relinquished in the exchange, the 2-year period ending on the date of such relinquishment, and

(ii) in the case of the property acquired in the exchange, the 2-year period beginning on the date of such acquisition.

(C) PROPERTY HELD FOR LESS THAN 2 YEARS.—Except in the case of an exchange which is part of a transaction (or series of transactions) structured to avoid the purposes of this subsection—

(i) only the periods the property was held by the person relinquishing the property (or any related person) shall be taken into account under subparagraph (B)(i), and

(ii) only the periods the property was held by the person acquiring the property (or any related person) shall be taken into account under subparagraph (B)(ii).

(D) SPECIAL RULE FOR CERTAIN PROPERTY.—Property described in any subparagraph of section 168(g)(4) shall be treated as used predominantly in the United States.

Amendments

P.L. 105-34, § 1052(a):

Act Sec. 1052(a) amended Code Sec. 1031(h) to read as above. Prior to amendment, Code Sec. 1031(h) read as follows:

(h) SPECIAL RULE FOR FOREIGN REAL PROPERTY.—For purposes of this section, real property located in the United States and real property located outside the United States are not property of a like kind.

The above amendment generally applies to transfers after June 8, 1997, in tax years ending after such date. For a special rule, see Act Sec. 1052(b)(2), below.

P.L. 105-34, § 1052(b)(2) provides:

(2) BINDING CONTRACTS.—The amendment made by this section shall not apply to any transfer pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before the disposition of property. A contract shall not fail to meet the requirements of the preceding sentence solely because—

(A) it provides for a sale in lieu of an exchange, or

(B) the property to be acquired as replacement property was not identified under such contract before June 9, 1997.

P.L. 101-239, § 7601(a):

Act Sec. 7601(a) amended Code Sec. 1031 by adding at the end thereof a new subsection (h) to read as above.

The above amendment applies to transfers after July 10, 1989, in tax years ending after such date, except as provided in Act Sec. 7601(b)(2), below.

Act Sec. 7601(b)(2) provides:

(2) BINDING CONTRACT.—The amendments made by this section shall not apply to any transfer pursuant to a written binding contract in effect on July 10, 1989, and at all times thereafter before the transfer.

[Sec. 1032]

SEC. 1032. EXCHANGE OF STOCK FOR PROPERTY.

[Sec. 1032(a)]

(a) NONRECOGNITION OF GAIN OR LOSS.—No gain or loss shall be recognized to a corporation on the receipt of money or other property in exchange for stock (including treasury stock) of such corporation. No gain or loss shall be recognized by a corporation with respect to any lapse or acquisition of an option, or with respect to a securities futures contract (as defined in section 1234B), to buy or sell its stock (including treasury stock).

Amendments

P.L. 106-554, § 401(c):

Act Sec. 401(c) amended the second sentence of Code Sec. 1032(a) by inserting ", or with respect to a securities futures contract (as defined in section 1234B)," after "an option".

The above amendment is effective on December 21, 2000.

P.L. 98-369, § 57(a):

Act Sec. 57(a) amended Code Sec. 1032(a) by adding at the end thereof a new sentence to read as above.

The above amendment applies to options acquired or lapsed after July 18, 1984, in tax years ending after such date.

[Sec. 1032(b)]

(b) BASIS.—

For basis of property acquired by a corporation in certain exchanges for its stock, see section 362.

[illegible] INVOLUNTARY CO

(1) GENERAL RULE.—If property [illegible] on or condemnation or threat

(1) CONVERSION INTO SIMILAR [illegible] erty so converted, no gain sl

(2) CONVERSION INTO MONEY [illegible] to the converted property, t[illegible] provided in this paragraph:

(A) NONRECOGNITION [illegible] subparagraph (B), for the [illegible] property similar or related [illegible] the acquisition of control o[illegible] taxpayer the gain shall be [illegible] conversion (regardless of wh[illegible] the cost of such other prope[illegible] such manner as the Secretar[illegible]

(i) no property or [illegible] be considered to have b[illegible] unless held by the taxp[illegible]

(ii) the taxpayer sh[illegible] the provisions of subse[illegible] stock would be its cost

(B) PERIOD WITHIN W[illegible] subparagraph (A) shall be t[illegible] property, or the earliest da[illegible] converted property, whiche[illegible]

(i) 2 years after th[illegible] conversion is realized,

(ii) subject to such [illegible] close of such later date [illegible] application shall be m[illegible] regulations prescribe.

(C) TIME FOR ASSESSM[illegible] taxpayer has made the elec[illegible]

(i) the statutory p[illegible] which any part of the g[illegible] expire prior to the ex[illegible] taxpayer (in such m[illegible] replacement of the con[illegible]

(ii) such deficien[illegible] notwithstanding the p[illegible] of law which would oth[illegible]

(D) TIME FOR ASSESSM[illegible] election provided in subpar[illegible] stock was purchased before[illegible] upon such conversion is rea[illegible] any taxable year ending b[illegible] provisions] of section 6212[illegible] would otherwise prevent su[illegible] which a deficiency for such[illegible]

(E) DEFINITIONS.—For[illegible]

(i) CONTROL.—Th[illegible] percent of the total co[illegible] 80 percent of the tota[illegible]

(ii) DISPOSITION O[illegible] property" means th[illegible] converted property, o[illegible] requisition or condem[illegible]