



# Instructions for Form 8824

## Like-Kind Exchanges (and section 1043 conflict-of-interest sales)

Section references are to the Internal Revenue Code unless otherwise noted.

### General Instructions

**Future developments.** For the latest information about developments related to Form 8824 and its instructions, such as legislation enacted after they were published, go to [IRS.gov/Form8824](https://www.irs.gov/Form8824).

### What's New

We made clarifying changes throughout.

### Reminders

**Special rules for capital gains invested in Qualified Opportunity Funds (QOFs).** Effective December 22, 2017, section 1400Z-2 provides a temporary deferral of inclusion in gross income for capital gains invested in QOFs, and permanent exclusion of capital gains from the sale or exchange of an investment in the QOF if the investment is held for at least 10 years. See the Form 8949 instructions on how to report your election to defer eligible gains invested in a QOF. For additional information (including details on investments in QOFs held for at least 10 years), see [Opportunity Zones Frequently Asked Questions](https://www.irs.gov/OpportunityZonesFrequentlyAskedQuestions) at IRS.gov.

**Exchanges limited to real property.** For 2018 and later years, section 1031 like-kind exchange treatment applies only to exchanges of real property held for use in a trade or business or for investment, other than real property held primarily for sale. See [Definition of real property](https://www.irs.gov/Definitionofrealproperty), later, for more details.

**Qualified Opportunity Investment.** If you are an eligible taxpayer who held a qualified investment in a QOF at any time during the year, you must file your return with Form 8997, Initial and Annual Statement of Qualified Opportunity Fund (QOF) Investments, attached. See the Form 8997 instructions.

### Purpose of Form

Use Parts I, II, and III of Form 8824 to report each exchange of business or investment real property for real property of a like kind. Form 8824 figures the amount of gain deferred as a result of a like-kind exchange. Use Part III to figure the amount of gain required to be reported on the tax return in the current year if cash or property that isn't of a like kind is involved in the exchange. Also, use Part III to figure the basis of the like-kind property received.

Certain members of the executive branch of the federal government and judicial officers of the federal government use Part IV to elect to defer gain on conflict-of-interest sales. Judicial officers of the federal government are the following.

1. Chief Justice of the United States.
2. Associate Justices of the Supreme Court.
3. Judges of the:
  - a. United States courts of appeals;
  - b. United States district courts, including the district courts in Guam, the Northern Mariana Islands, and the Virgin Islands;
  - c. Court of Appeals for the Federal Circuit;
  - d. Court of International Trade;
  - e. Tax Court;
  - f. Court of Federal Claims;

- g. Court of Appeals for Veterans Claims;
- h. United States Court of Appeals for the Armed Forces; and
- i. Any court created by an Act of Congress, the judges of which are entitled to hold office during good behavior.

**Multiple exchanges.** If you made more than one like-kind exchange, you can file a summary on one Form 8824 and attach your own statement showing all the information requested on Form 8824 for each exchange. Include your name and identifying number at the top of each page of the statement. On the summary Form 8824, enter only your name and identifying number, "Summary" on line 1, the total recognized gain from all exchanges on line 23, and the total basis of all like-kind property received on line 25.

### When To File

If during the current tax year you transferred property to another party in a like-kind exchange, you must file Form 8824 with your tax return for that year. Also file Form 8824 for the 2 years following the year of a related party exchange. See [Line 7](https://www.irs.gov/Line7), later, for details.

### Like-Kind Exchanges

**Section 1031 regulations.** Regulations sections 1.1031(a)-1, 1.1031(a)-3, and 1.1031(k)-1 implement statutory changes limiting the application of section 1031 to exchanges of real property. These regulations, which apply to like-kind exchanges beginning after December 2, 2020, provide a definition of real property under section 1031, and address a taxpayer's receipt of personal property that is incidental to real property the taxpayer receives in the exchange.

Generally, if you exchange business or investment real property solely for business or investment real property of a like kind, section 1031 provides that no gain or loss is recognized. If, as part of the exchange, you also receive other (not like-kind) property or money, gain is recognized to the extent of the other property and money received, but a loss isn't recognized.

Section 1031 doesn't apply to exchanges of real property held primarily for sale. See section 1031(a)(2). In addition, section 1031 doesn't apply to certain exchanges involving tax-exempt use property subject to a lease. See section 470(e)(4).

**Definition of real property.** Regulations section 1.1031(a)-3 defines real property as land and improvements to land, unsevered natural products of the land, and water and air space superjacent to land. It is further described as tangible and intangible real property, as discussed later.

**Tangible property.** Tangible property is real property for purposes of section 1031 if it meets any of the following.

- On the date it is transferred in an exchange, the property is classified as real property under the law of the state or local jurisdiction in which the property is located. See Regulations section 1.1031(a)-3(a)(6) and [Intangible property](https://www.irs.gov/Intangibleproperty) next.
- The property is specifically listed as real property in Regulations section 1.1031(a)-3. See [Stock that is real property](https://www.irs.gov/Stockthatisrealproperty), later.
- The property is considered real property based on all the facts and circumstances under the various factors provided in Regulations section 1.1031(a)-3(a)(2). See [Property affixed to or integrated into real property](https://www.irs.gov/Propertyaffixedtoorintegratedintorealproperty), later.

Each distinct asset is separately analyzed from any other distinct asset to which it relates for purposes of determining whether the

asset is real property under section 1031. See Regulations section 1.1031(a)-3(a)(4).

**Intangible property.** Intangible property is real property for purposes of section 1031 if it meets any of the following, subject to the exceptions provided in [Intangible property that is never real property under section 1031](#) next.

- On the date it is transferred in an exchange, the property is classified as real property under the law of the state or local jurisdiction in which the property is located.
- It is specifically listed in Regulations section 1.1031(a)-3 as real property.
- It derives its value from real property or an interest in real property and is inseparable from that real property or interest in real property; for example, an easement or an option to acquire real property. See Regulations section 1.1031(a)-3(a)(5).

**Intangible property that is never real property under section 1031.** The following assets are exceptions and not real property for purposes of section 1031, regardless of the classification of the property under state or local law.

- Stock (other than the type of stock described in [Stock that is real property](#) next), bonds, or notes.
- Other securities or evidences of indebtedness or interest.
- Interests in a partnership (other than an interest in a partnership that has in effect a valid election under section 761(a) to be excluded from the application of all of subchapter K).
- Certificates of trust or beneficial interests.
- Choses in action.

**Stock that is real property.** The following stock is listed in Regulations section 1.1031(a)-3 as real property for section 1031 purposes.

- Stock in a cooperative housing corporation.
- Shares in a mutual ditch, reservoir, or irrigation company described in section 501(c)(12)(A) if, at the time of the exchange, such shares have been recognized by the highest court of the state in which the company was organized, or by a state statute, as constituting or representing real property or an interest in real property.

**Like-kind property.** Properties are of like kind if they are of the same nature or character, even if they differ in grade or quality.

Generally, real properties are like-kind properties, regardless of whether they are improved or unimproved properties.

Property classified as real property under one of the definitions in the final regulations discussed above may be like-kind to other real property defined under another definition in the regulations.

However, real property in the United States and real property outside the United States aren't like-kind properties. See Pub. 544, Sales and Other Dispositions of Assets, for more details.

**Property affixed to or integrated into real property.** If tangible property is permanently affixed to real property and will ordinarily remain affixed for an indefinite period of time, the property is generally an inherently permanent structure and real property for section 1031 purposes, regardless of the use or purpose of the property or whether it contributes to the production of income. In addition, a structural component is real property for section 1031 purposes if it is a constituent part of, and integrated into, an inherently permanent structure, regardless of whether the structural component contributes to the production of income. For example, items of machinery or equipment are real property for like-kind exchange purposes if they comprise an inherently permanent structure, a structural component of an inherently permanent structure, or are classified as real property under state or local law.

**Deferred exchanges.** A deferred exchange occurs when, based on an agreement, the property received in the exchange is received after the transfer of the property given up. For a deferred exchange to qualify as like kind, you must comply with the timing requirements for identification and receipt of replacement property. The replacement property for the exchange must be identified within 45 days after the property being given up is transferred. The replacement property must be received within 180 days, or by the

due date of the tax return including extensions, whichever is earlier. See the instructions for [Line 5](#) and [Line 6](#), later, for more details.

If you make a deferred exchange using a qualified intermediary (QI), the transfer of the property given up and receipt of like-kind property is treated as a like-kind exchange. If you fail to meet the timing requirements because of the QI, your transaction won't qualify as a deferred exchange and any gain may be taxable in the year you transferred the property. However, if the QI defaults on its obligation to acquire and transfer replacement property because of bankruptcy or receivership proceedings and you meet certain requirements, you may be able to report the gain in the year or years payments are received. For the requirements, see Rev. Proc. 2010-14, 2010-12 I.R.B. 456, available at [IRS.gov/irb/2010-12\\_IRB/ar07.html](#). Related parties and agents of the taxpayer are not eligible to be QIs, and are referred to as "disqualified persons." For more information on QIs and disqualified persons, see Pub. 544, chapter 1.



*The QI exchange constitutes one safe harbor. For more details on QI exchanges and for a discussion of other safe harbors, see Pub. 544.*

**Incidental personal property.** For deferred like-kind exchanges involving a QI, personal property that is incidental to replacement real property (incidental personal property) is disregarded in determining whether a taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or non-like-kind property held by the QI are expressly limited, as provided in Regulations section 1.1031(k)-1(g)(6) and (7).

Personal property is incidental to real property acquired in an exchange if:

- In standard commercial transactions, the personal property is typically transferred together with the real property; and
- The aggregate fair market value of the incidental personal property transferred with the real property does not exceed 15% of the aggregate fair market value of the replacement real property or properties received in the exchange (15% limitation). See Regulations section 1.1031(k)-1(g)(7).

**Multi-asset exchanges.** A multi-asset exchange involves the transfer and receipt of more than one group of like-kind properties. The transfer or receipt of multiple properties within one like-kind group is also a multi-asset exchange. However, an exchange of a single piece of land, a vehicle, and cash for a single piece of land and a vehicle is not a multi-asset exchange because, of the assets transferred, section 1031 may apply only to the exchange of the land for other land. Special rules apply when figuring the amount of gain recognized and your basis in properties received in a multi-asset exchange. For details, see Regulations section 1.1031(j)-1.

**Reporting of multi-asset exchanges.** If you transferred and received (a) more than one group of like-kind properties, or (b) cash or other (not like-kind) property, don't complete lines 12 through 18 of Form 8824. Instead, attach your own statement showing how you figured the realized and recognized gain, and enter the correct amount on lines 19 through 25. Report any recognized gains on your Schedule D; Form 4797, Sales of Business Property; or Form 6252, Installment Sale Income, whichever applies.

**Exchanges using a qualified exchange accommodation arrangement (QEAA).** If property is transferred to an exchange accommodation titleholder (EAT) and held in a QEAA, the EAT may be treated as the beneficial owner of the property, the property transferred from the EAT to you may be treated as property you received in an exchange, and the property you transferred to the EAT may be treated as property you gave up in an exchange. This may be true even if the property you are to receive is transferred to the EAT before you transfer the property you are giving up. However, the property transferred to you can't be treated as property received in an exchange if you previously owned it within 180 days of its transfer to the EAT. For details, see Rev. Proc. 2000-37, as modified by Rev. Proc. 2004-51. Rev. Proc. 2000-37 is on page 308 of Internal Revenue Bulletin 2000-40 at [IRS.gov/pub/irs-irbs/irb00-40.pdf](#). Rev. Proc. 2004-51, 2004-33 I.R.B. 294, is available at [IRS.gov/irb/2004-33\\_IRB/ar13.html](#).

**Property used as home.** If the property given up was owned and used as your home for at least a total of 2 years during the 5-year period ending on the date of the exchange, you may be able to exclude part or all of any gain figured on Form 8824. For details on the exclusion of gain (including how to figure the amount of the exclusion), see Pub. 523, *Selling Your Home*. Fill out Form 8824 according to its instructions, with the following exceptions.

1. Subtract line 18 from line 17. Enter that result on line 19. On the dotted line next to line 19, enter "Section 121 exclusion" and the amount of the exclusion.
2. On line 20, enter the smaller of:
  - a. Line 15 minus the exclusion, or
  - b. Line 19.Don't enter less than zero.
3. Subtract line 15 from the sum of lines 18 and 23. Add the amount of your exclusion to the result. Enter that sum on line 25.

**Property used partly as home.** If the property given up was used partly as a home, and partly for business or investment, you will need to use two separate Forms 8824 as worksheets. Use one worksheet for the part of the property used as a home, and the other worksheet for the part used for business or investment. Fill out only lines 15 through 25 of each worksheet Form 8824. On the worksheet Form 8824 for the part of the property used as a home, follow steps (1) through (3) above, except that instead of following step (2), enter the amount from line 19 on line 20. On the worksheet Form 8824 for the part of the property used for business or investment, follow steps (1) through (3) above only if you can exclude at least part of any gain from the exchange of that part of the property; otherwise, complete the form according to its instructions. Enter the combined amounts from lines 15 through 25 of both worksheet Forms 8824 on the Form 8824 you file. Don't file either worksheet with Form 8824.

**More information.** For details, see Rev. Proc. 2005-14, 2005-7 I.R.B. 528, available at [IRS.gov/irb/2005-07\\_IRB/ar10.html](https://www.irs.gov/irb/2005-07_IRB/ar10.html).

**Additional information.** For more information on like-kind exchanges, see section 1031 and its regulations and Pub. 544.

## Specific Instructions

**Lines 1 and 2.** Generally, only real property should be described on lines 1 and 2, including intangible property that is treated as real property for like-kind exchange purposes. Enter the address and type of property. For property that is treated as real property for like-kind exchange purposes, but does not have an address, enter a short description. If the property described on line 1 or line 2 is real property located outside the United States, indicate the country.

**Line 5.** Enter on line 5 the date of the written identification of the like-kind property you received in a deferred exchange. To comply with the **45-day written identification requirement**, the following conditions must be met.

1. The like-kind property you receive in a deferred exchange is designated in writing as replacement property either in a document you signed or in a written agreement signed by all parties to the exchange.
2. The document or agreement describes the replacement property in a clear and recognizable manner. Real property should be described using a legal description, street address, or distinguishable name (for example, "Mayfair Apartment Building").
3. No later than 45 days after the date you transferred the property you gave up:
  - a. You fax, hand deliver, mail, or otherwise send the document you signed to the person required to transfer the replacement property to you (including a disqualified person) or to another person involved in the exchange (other than a disqualified person); or
  - b. All parties to the exchange sign the written agreement designating the replacement property.

Generally, a disqualified person is either your agent at the time of the transaction or a person related to you. For more details, see Regulations section 1.1031(k)-1(k). For more information on related persons, see [Line 7](#), later. Also, see details on disqualified persons in Pub. 544.

**Note.** If you received the replacement property before the end of the 45-day period, you are automatically treated as having met the 45-day written identification requirement. In this case, enter on line 5 the date you received the replacement property.

**Line 6.** Enter on line 6 the date you received the like-kind property from the other party.

The property must be received by the earlier of the following dates.

- The 180th day after the date you transferred the property given up in the exchange.
- The due date (including extensions) of your tax return for the year in which you transferred the property given up.

**Line 7.** Special rules apply to like-kind exchanges made with related parties, either directly or indirectly. A related party includes your spouse, child, grandchild, parent, grandparent, brother, sister, or a related corporation, S corporation, partnership, trust, estate, or tax-exempt organization. See section 1031(f).

An exchange made indirectly with a related party includes:

- An exchange made with a related party through an intermediary (such as a QI or an EAT, as defined in Pub. 544); or
- An exchange made by a disregarded entity (such as a single-member limited liability company) if you or a related party owned that entity.

An exchange structured to avoid the related party rules isn't a like-kind exchange. Don't report it on Form 8824. Instead, you should report the disposition of the property given up as if the exchange had been a sale. See section 1031(f)(4). Such an exchange includes the transfer of property you gave up to a QI in exchange for property you received that was formerly owned by a related party if the related party received cash or other (not like-kind) property for the property you received, and you used the QI intermediary to avoid the application of the related party rules. See Rev. Rul. 2002-83 for more details. You can find Rev. Rul. 2002-83 on page 927 of Internal Revenue Bulletin 2002-49 at [IRS.gov/pub/irs-irbs/irb02-49.pdf](https://www.irs.gov/pub/irs-irbs/irb02-49.pdf).



*If, after the exchange, you own replacement property that a related party sold into the exchange for cash, or other non-like-kind property, through an unrelated party such as a QI, don't report the transaction on Form 8824 unless one of the exceptions on line 11 applies. Instead, report the disposition of the property given up as if the exchange had been a sale.*

If you or the related party (either directly or indirectly) dispose of property received in an exchange before the date that is 2 years after the last transfer that was part of the exchange, the deferred gain or (loss) from line 24 must be reported on your return for the year of disposition (unless an exception on Form 8824, line 11, applies).



*The running of the 2-year holding period will be tolled for any period during which your risk of loss is substantially reduced. See Two-year holding period in Pub. 544.*

If you are filing this form for 1 of the 2 years following the year of the exchange, complete Parts I and II. If both lines 9 and 10 are "No," **stop**. You don't have to complete Part III.

If either line 9 or line 10 is "Yes," and an exception on line 11 applies, check the applicable box on line 11, attach any required explanation, and **stop**. If none of the exceptions on line 11 apply, complete Part III. Report the deferred gain or (loss) from line 24 on this year's tax return as if the exchange had been a sale.

**Lines 11a through 11c.** The line 11 exceptions are in Form 8824 on lines 11a through 11c. These are the exceptions.

- Line 11a. The disposition was after the death of either party.



- Line 11b. The disposition was an involuntary conversion and the threat of conversion occurred after the exchange.
- Line 11c. You can establish to the satisfaction of the IRS that neither the disposition nor the exchange had tax avoidance as one of its principal purposes.

**Line 11c.** If you believe that you can establish to the satisfaction of the IRS that tax avoidance was not a principal purpose of both the exchange and the disposition, attach an explanation. Generally, tax avoidance won't be seen as a principal purpose in the case of:

- A disposition of property in a nonrecognition transaction,
- An exchange in which the related parties derive no tax advantage from the shifting of basis between the exchanged properties, or
- An exchange of undivided interests in different properties that results in each related party holding either the entire interest in a single property or a larger undivided interest in any of the properties.

**Lines 12, 13, and 14.** Line 12 should be completed if other property that doesn't qualify as like-kind property was part of the exchange, in addition to the like-kind property. Enter the fair market value (FMV) and the adjusted basis of the other property on lines 12 and 13, respectively. The gain or (loss) from this property is figured on line 14 and must be reported on your return. Report gain or (loss) as if the exchange were a sale.

**Line 15.** Include on line 15 the sum of:

- Any cash paid to you by the other party;
- The FMV of other (not like-kind) property you received, if any; and
- Net liabilities assumed by the other party—the excess, if any, of liabilities (including mortgages) assumed by the other party over the total of (a) any liabilities you assumed, (b) cash you paid to the other party, and (c) the FMV of the other (not like-kind) property you gave up.

See the example in the instructions for line 18.

Reduce the sum of the above amounts (but not below zero) by any exchange expenses you incurred.

The following rules apply in determining the amount of liability treated as assumed.

- A recourse liability (or portion thereof) is treated as assumed by the party receiving the property if that party has agreed to and is expected to satisfy the liability (or portion thereof). It doesn't matter whether the party transferring the property has been relieved of the liability.
- A nonrecourse liability is generally treated as assumed by the party receiving the property subject to the liability. However, if an owner of other assets subject to the same liability agrees with the party receiving the property to, and is expected to, satisfy part or all of the liability, the amount treated as assumed is reduced by the smaller of (a) the amount of the liability that the owner of the other assets has agreed to and is expected to satisfy, or (b) the FMV of those other assets.

**Line 18.** Include on line 18 the sum of:

- The adjusted basis of the like-kind real property you gave up;
- Exchange expenses, if any (except for expenses used to reduce the amount reported on line 15); and
- The net amount paid to the other party—the excess, if any, of the total of (a) any liabilities you assumed, (b) cash you paid to the other party, and (c) the FMV of the other (not like-kind) property you gave up over any liabilities assumed by the other party.

**Figuring amounts for lines 15 through 19.** See Regulations section 1.1031(d)-2 and the following example for figuring amounts to enter on lines 15 through 19.

**Example.** A owns an apartment house with an FMV of \$220,000, with an adjusted basis of \$100,000, and that is subject to a mortgage of \$80,000. B owns an apartment house with an FMV of \$250,000, with an adjusted basis of \$175,000, and that is subject to a mortgage of \$150,000.

A transfers his apartment house to B and receives in exchange B's apartment house plus \$40,000 cash. A assumes the mortgage on the apartment house received from B, and B assumes the mortgage on the apartment house received from A.

A enters on line 15 only the \$40,000 cash received from B. The \$80,000 of liabilities assumed by B isn't included because it doesn't exceed the \$150,000 of liabilities A assumed. A enters \$250,000 on line 16, the FMV of the apartment house received from B. A enters \$290,000 on line 17, the sum of lines 15 and 16. A enters \$170,000 on line 18—the \$100,000 adjusted basis, plus the \$70,000 excess of the liabilities A assumed over the liabilities assumed by B (\$150,000 - \$80,000). A subtracts line 18 from line 17 and enters the \$120,000 gain realized on the exchange on line 19.

B enters \$30,000 on line 15—the excess of the \$150,000 of liabilities assumed by A, over the sum of the \$80,000 of liabilities assumed from A and the \$40,000 cash B paid A (\$120,000). B enters \$220,000 on line 16, the FMV of the apartment house received from A. B enters \$250,000 on line 17, the sum of lines 15 and 16. B enters on line 18 only the adjusted basis of \$175,000, because the total of the \$80,000 of liabilities B assumed from A and the \$40,000 cash B paid A doesn't exceed the \$150,000 of liabilities assumed by A. B subtracts line 18 from line 17 and enters the \$75,000 in gain realized on line 19.

**Line 21.** If you disposed of section 1245, 1250, 1252, 1254, or 1255 property (see the instructions for Part III of Form 4797), you may be required to recapture as ordinary income part or all of the realized gain (line 19). Figure the amount to enter on line 21 as follows.

**Section 1245 real property.** Enter the smaller of:

1. The total adjustments for deductions (whether for the same or other property) allowed or allowable to you or any other person for depreciation or amortization (up to the amount of gain shown on line 19); or
2. The gain shown on line 20, if any, plus the FMV of non-section 1245 like-kind property received.

**Section 1250 property.** Enter the smaller of:

1. The gain you would have had to report as ordinary income because of additional depreciation if you had sold the property (see the Form 4797 instructions for line 26); or
2. The larger of:
  - a. The gain shown on line 20, if any; or
  - b. The excess, if any, of the gain in item (1) above over the FMV of the section 1250 property received.

**Section 1252, 1254, and 1255 property.** The rules for these types of property are similar to those for section 1245 property. See Regulations sections 1.1252-2(c) and 1.1254-2(d) and Temporary Regulations section 16A.1255-2(c) for details. If the installment method applies to this exchange:

1. See section 453(f)(6) to determine the installment sale income taxable for this year and report it on Form 6252;
2. Enter on Form 6252, line 25 or 36, the section 1252, 1254, or 1255 recapture amount you figured on Form 8824, line 21—don't enter more than the amount shown on Form 6252, line 24 or 35;
3. Also enter this amount on Form 4797, line 15; and
4. If all the ordinary income isn't recaptured this year, report in future years on Form 6252 the ordinary income up to the taxable installment sale income, until it is all reported.

**Line 22.** Report a gain from the exchange of property used in a trade or business (and other noncapital assets) on Form 4797, line 5 or line 16. Report a gain from the exchange of capital assets according to the Schedule D instructions for your return. Be sure to use the date of the exchange as the date for reporting the gain. If the installment method applies to this exchange, see section 453(f)(6) to determine the installment sale income taxable for this year and report it on Form 6252.

**Line 24.** If line 19 is a loss, enter it on line 24. Otherwise, subtract the amount on line 23 from the amount on line 19 and enter the result. For exchanges with related parties, see [Line 7](#), earlier.

**Figuring amounts for lines 20 through 24.** See the following example for figuring the amounts to enter on lines 20 through 24.

**Example.** In addition to the facts in the example for lines 15 through 19, assume that A previously allocated a portion of the basis in its apartment house for depreciation purposes under section 168 to assets that are section 1245 property. Applying section 1.1031(a)-3 of the regulations, A determines that the section 1245 assets are real property for section 1031 like-kind exchange treatment. Additionally, A determines that the total depreciation allowed or allowable on the section 1245 property is \$50,000. A enters \$40,000 on line 20, the smaller of line 15 or line 19. A enters \$40,000 on line 21 as ordinary income under the section 1245 depreciation recapture rules. The remaining \$10,000 in potential depreciation recapture (\$50,000 - \$40,000) attaches to the property acquired from B. See Regulations section 1.1245-2(c)(4). A subtracts line 21 from line 20 and enters \$0 on line 22. A enters the sum of lines 21 and 22, \$40,000, on line 23. A subtracts line 23 from line 19 and enters the deferred gain on the exchange, \$80,000, on line 24.

Assume that B did not previously allocate the basis in its apartment house for depreciation purposes under section 168, so it does not contain any like-kind section 1245 property for section 1031 purposes. B enters \$30,000 on line 20, the smaller of line 15 or line 19. B enters \$0 on line 21 as it has no ordinary income from depreciation recapture. B subtracts line 21 from line 20 and enters \$30,000 on line 22. B enters the sum of line 21 and line 22, \$30,000, on line 23. B subtracts line 23 from line 19 and enters the deferred gain on the exchange, \$45,000, on line 24.

**Line 25.** The amount on line 25 is your basis in the like-kind property you received in the exchange. Your basis in other property (not like-kind) received in the exchange, if any, is its FMV.

If you received section 1245 property or intangible property that is like-kind property in the exchange, the amount on line 25 must be allocated to each like-kind section 1250 property, like-kind section 1245 property, and like-kind intangible property received in the exchange in proportion to their fair market values.

**Example.** Referring to the facts in the examples for lines 15 through 24, A determines the apartment house received from B contains only like-kind section 1250 property and no section 1245 property and no intangible property treated as section 1031 like-kind property. A subtracts line 15 from the sum of lines 18 and 23 and enters \$170,000 on line 25. A allocates the entire \$170,000 to the basis of the like-kind section 1250 property received in the exchange. As noted in the example above, A's remaining \$10,000 in potential section 1245 depreciation recapture attaches to the apartment house received by A from B, and \$10,000 of any gain recognized on the subsequent sale of this property is recognized as ordinary income. See Regulations sections 1.1245-5(a)(1) and 1.1250-3(d)(4).

B determines that the apartment house received from A with an FMV of \$220,000 contains like-kind section 1245 property with an FMV of \$55,000, and like-kind section 1250 property with an FMV of \$165,000. B enters \$175,000 on line 25, the sum of lines 18 and 23 less line 15. B allocates \$131,250 (\$165,000/\$220,000 times \$175,000) to the basis of the like-kind section 1250 property received in the exchange and allocates \$43,750 (\$55,000/\$220,000 times \$175,000) to the basis of the like-kind section 1245 property received in the exchange.

## Section 1043 Conflict-of-Interest Sales (Part IV)

If you, as an eligible person, sell property at a gain according to a certificate of divestiture issued by the Office of Government Ethics (OGE) or the Judicial Conference of the United States (or its designee) and purchase replacement property (permitted property), you can elect to defer part or all of the realized gain. You must recognize gain on the sale only to the extent that the amount realized on the sale is more than the cost of replacement property purchased within 60 days after the sale. (You must also recognize any ordinary income recapture.) Permitted property is any obligation of the United States or any diversified investment fund approved by the OGE. "Eligible persons" includes an officer or employee of the executive branch, or a judicial officer of the federal government, but

not a special government employee defined in 18 U.S.C. section 202. "Eligible persons" also includes any spouse, minor, or dependent child whose ownership of any property is attributable to such an officer or employee.



**TIP** *If the property you sold was stock you acquired by exercising a statutory stock option, you may be treated as meeting the holding periods that apply to such stock, regardless of how long you actually held the stock. This may benefit you if you don't defer your entire gain, because it may allow you to treat the gain as a capital gain instead of ordinary income. For details, see section 421(d) or Pub. 525, Taxable and Nontaxable Income.*

Complete Part IV of Form 8824 only if the cost of the replacement property is more than the basis of the divested property and you elect to defer the gain. Otherwise, report the sale on your Schedule D or Form 4797, whichever applies.

Your basis in the replacement property is reduced by the amount of the deferred gain. If you made more than one purchase of replacement property, reduce your basis in the replacement property in the order you acquired it.

**Line 30.** Enter the amount you received from the sale of the divested property, minus any selling expenses.

**Line 35.** Follow these steps to determine the amount to enter.

1. Use Part III of Form 4797 as a worksheet to figure ordinary income under the recapture rules.
2. Enter on Form 8824, line 35, the amount from Form 4797, line 31. Don't attach the Form 4797 used as a worksheet to your return.
3. Report the amount from line 35 on Form 4797, line 10, column (g). In column (a), enter "From Form 8824, line 35." Don't complete columns (b) through (f).

**Line 36.** If you sold a capital asset, enter any capital gain from line 36 on your Schedule D. If you sold property used in a trade or business (or any other asset for which the gain is treated as ordinary income), report the gain on Form 4797, line 2 or line 10, column (g). In column (a), write "From Form 8824, line 36." Don't complete columns (b) through (f). If you held a qualified investment in a QOF at any time during the year, you must file your return with Form 8997, attached. See the Form 8997 instructions.

**Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for individual taxpayers filing this form is approved under OMB control number 1545-0074 and is included in the estimates shown in the instructions for their individual income tax return. The estimated burden for all other taxpayers who file this form is shown below.

<b>Recordkeeping</b> . . . . .	10 hr., 16 min.
<b>Learning about the law or the form</b> . . . . .	1 hr., 59 min.
<b>Preparing the form</b> . . . . .	2 hr., 14 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be

happy to hear from you. See the instructions for the tax return with which this form is filed.

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