PETROLEUM STRATEGIES

Your 1031 Exchange Partner

Simultaneous Exchange

The simultaneous exchange is the oldest method of performing an IRC Section 1031 tax deferred exchange. It is also one of the most uncommon ways that exchanges take place, because it is very rare to find another party who wants to swap for your property. The other party has to want what you have at exactly the same time you want to acquire their property. Equity and debt must match on both properties to avoid one party recognizing some “boot.”

In this scenario, a Qualified Intermediary is used to structure the exchange. The 1991 Treasury Regulations state that the only “safe harbor” for a simultaneous exchange is using the services of a Qualified Intermediary (“QI.”) The QI provides written instructions to the closing officers, prepares the exchange agreement and other exchange documents and insulates the Exchanger from any “constructive receipt” issues. In addition, this format can be easily converted to a delayed exchange and eliminate the time pressure of trying to close the entire transaction simultaneously.

The seller needs a Qualified Intermediary to perform a valid transaction. It is not sufficient to merely wire proceeds from the sale closing to the purchase closing on the same day and obtain tax deferral. If the Exchanger has “constructive receipt” of the funds, even if only for a few minutes or hours, the transaction no longer qualifies for tax deferral.