1998

Department of the Treasury
Internal Revenue Service

Instructions for Form 8824

Like-Kind Exchanges

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

General Instructions

Purpose of Form

Use Parts I, II, and III of Form 8824 to report the exchange of business or investment property for property that is of a like kind (section 1031). Use Part IV to report the nonrecognition of gain from conflict-of-interest sales by certain members of the executive branch of the Federal Government (section 1043).

For more information on like-kind exchanges, see section 1031 and its regulations and **Pub. 544,** Sales and Other Dispositions of Assets.

When To File

For each like-kind exchange, you must file Form 8824 for the tax year you transferred property to another party in an exchange. If you made a related party exchange (see **Related party exchanges** below), you must file Form 8824 for 2 years following the year of the exchange.

Like-Kind Exchanges

Generally, if you exchange business or investment property solely for business or investment property of a like kind, no gain or loss is recognized under section 1031. If you also receive other property or money, a gain is recognized to the extent of the other property or money received, but a loss is not recognized.

Section 1031 does not apply to exchanges of inventory, stocks, bonds, notes, other securities or evidence of indebtedness, and certain other assets. See section 1031(a)(2).

Like-kind property. Properties are like kind if they are of the same nature or character, even if they differ in grade or quality. Personal property of a like class is also considered like kind. However, livestock of different sexes is **not** like-kind property. Also, personal property used predominantly in the United States and personal property used predominantly outside the United States are **not** like-kind properties. See Pub. 544 for more details.

Real property is of the same kind as other real property, regardless of whether the properties are improved or unimproved. However, real property in the United States and real property outside the United States are **not** like-kind properties.

Deferred exchanges. A deferred exchange occurs when the property **received** in the exchange is not received immediately upon the transfer of the property **given up.** For a deferred exchange to qualify as like kind, you must:

- Identify the replacement property you receive within 45 days after the date you transferred the property given up, **and**
- Receive the new property by the earlier of **(a)** 180 days after the date you transferred the property given up, **or (b)** the due date of your tax return for the year of the transfer (including extensions).

You identify property by notifying, in writing, another party to the exchange (other than a related party) of your selection of the property. Identification may also be made in a written agreement for the exchange of properties.

Multi-asset exchanges. A multi-asset exchange occurs when the exchanged properties consist of the transfer and receipt of more than one group of like-kind properties. For example, an exchange of land, vehicles, and cash for land and vehicles would be a multi-asset exchange. An exchange of land, vehicles, and cash for only land would not be a multi-asset exchange. A multi-asset exchange also occurs if only one group of like-kind properties is created but more than one property is transferred or received within that group.

Special rules apply when figuring the amount of gain recognized and the basis of 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, do not complete lines 12 through 18 of Form 8824. Instead, attach a sheet showing how you figured the realized and recognized gain, and enter the correct amount for lines 19 through 25. Report recognized gain on **Schedule D, Form 4797,** Sales of Business Property, or **Form 6252,** Installment Sale Income, whichever applies.

Related party exchanges. Special rules apply to like-kind exchanges made with a related party. A **related party** includes your spouse, child, grandchild, parent, brother or sister, or a related corporation, S corporation, partnership, or trust. See section 1031(f).

If either you or the related party disposes of property received in an exchange before the date that is 2 years after the last transfer of property from 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 line 11 applies).

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 there,** and attach the form to your return. If either line 9 or line 10 is “Yes” and an exception on line 11 applies, check the applicable box on line 11, **stop there,** and attach the form to your return. If no line 11 exceptions apply, complete Part III. The deferred gain or (loss) from line 24 must be reported on this tax year's return as if the exchange had been a sale.

An exchange structured to avoid related party rules is **not** treated as a like-kind exchange. See section 1031(f)(4).

Specific Instructions

Lines 1 and 2. For real property, enter the address and type of property. For personal property, enter a short description. For property located outside the United States, enter the country.

Line 5. See **Deferred exchanges** above.

Line 7. See **Related party exchanges** above.

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. See **Pub. 537,** Installment Sales, for exceptions where tax avoidance is not a principal purpose.

Lines 12, 13, and 14. If you gave up other property 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 was a sale.

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

- Any cash paid to you by the other party,

Cat. No. 12597K

- 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** assumed by the other party (including mortgages on the property you gave up); **over the total** of: **(a)** any liabilities you assumed (or that applied to the property you received), **(b)** cash you paid to the other party, and **(c)** the FMV of other property you gave up.

Reduce the sum of the above amounts (but not below zero) by any exchange expenses you incurred. See the example below the line 18 instructions.

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

- The adjusted basis of the like-kind property you gave up,
- Exchange expenses, if any (except for expenses used to reduce the amount reported on line 15), **and**
- 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 property you gave up; **over** any liabilities assumed by the other party.

See Regulations section 1.1031(d)-2 and the following example for figuring amounts to enter on lines 15 and 18.

Example. A owns an apartment house with an FMV of $220,000, an adjusted basis of $100,000, and subject to a mortgage of $80,000. B owns an apartment house with an FMV of $250,000, an adjusted basis of $175,000, and 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. Each apartment house is transferred subject to the mortgage on it.

A enters on line 15 only the $40,000 cash received from B. The $80,000 of liabilities assumed by B is not included because it does not exceed the $150,000 of liabilities A assumed. 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).

B enters $30,000 on line 15—the excess of the $150,000 of liabilities assumed by A over the total ($120,000) of the $80,000 of liabilities B assumed and the $40,000 cash B paid. B enters on line 18 only the adjusted basis of $175,000 because the total of the $80,000 of liabilities B assumed and the $40,000 cash B paid does not exceed the $150,000 of liabilities assumed by A.

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:

- For **section 1245** property, enter the **smaller** of **(a)** 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 the gain shown on line 19), **or (b)** any gain shown on line 20, **plus** the FMV of non-section 1245 like-kind property acquired.
- For **section 1250** property, enter the **larger** of **(a)** the **excess,** if any, of the gain you would have had to report as ordinary income because of additional depreciation (see the Form 4797 instructions for line 26) if you had sold the property **over** the FMV of the section 1250 property acquired, **or (b)** any gain shown on line 20.
- The rules for **section 1252, 1254,** and **1255** property are similar to those for section 1245 property. See Regulations section 1.1252-2(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 this year's taxable amount of installment sale income 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. Do not enter more than the amount shown on Form 6252, line 24 or 35.

3. Also, enter this amount on Form 4797, line 15.

If not recapturing all the ordinary income this year, you must report on Form 6252 the ordinary income up to the taxable installment sale income in future years 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 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 this year's taxable amount and report it on Form 6252.

Line 24. If line 19 is a loss, enter it on line 24. Otherwise, subtract any line 23 amount from the line 19 amount, and enter the result. See **Related party exchanges** on page 1 for exchanges with related parties.

Line 25. The amount on line 25 is your basis of the like-kind property you received in the exchange. The basis of other property received in the exchange, if any, is its FMV.

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

If you sell property at a gain according to a certificate of divestiture issued by the Office of Government Ethics (OGE), you may elect to recognize gain on the sale only to the extent that the amount realized on the sale exceeds the cost of replacement property (permitted property) purchased within 60 days after the sale. **Permitted property** is any obligation of the United States or any diversified investment fund approved by the OGE.

Complete Part IV of Form 8824 only if the cost of the replacement property exceeds the basis of the divested property. Otherwise, report the gain on Schedule D or Form 4797, whichever applies.

Basis in the replacement property is reduced by the amount of the gain not recognized. If you made more than one purchase of replacement property, reduce the basis of the replacement property in the order it was acquired.

Line 29. Enter the amount you received from the sale of the divested property, minus any selling expenses.

Line 34. 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 34, the amount from Form 4797, line 31. **Do not** attach the Form 4797 (worksheet) to your return.

3. Report the amount from line 34 on Form 4797, line 10, column (g). In column (a), write “From Form 8824, line 34.” **Do not** complete columns (b) through (f).

Line 35. If you sold a capital asset, enter any gain from line 35 on Schedule D.

If you sold property used in a trade or business (or any other noncapital asset), report the gain on Form 4797, line 2 or 10, column (g). In column (a), write “From Form 8824, line 35.” **Do not** complete columns (b) through (f).