

September 9, 2016

The Honorable Hillary Rodham Clinton
Hillary for America
1 Pierrepoint Plaza
Brooklyn, NY 11201

Dear Secretary Clinton:

The undersigned real estate and land conservation organizations share your commitment to leveling the playing field for small businesses and entrepreneurs, rewarding businesses that invest in jobs in the United States, and promoting conservation and collaborative stewardship of parks and public lands. Like-kind exchanges are a powerful tool that accelerates domestic investment and broad-based job growth, while also contributing to critical land conservation efforts. As you continue to roll out your economic policy initiatives, we urge you preserve the tax law's longstanding treatment of like-kind exchanges.

Like-kind exchanges under section 1031 of the tax code are one of the few business-related tax incentives available to and used by taxpayers of all sizes, including individuals, partnerships, limited liability companies, and corporations. Over 350,000 exchanges were completed in 2013, the most recent year data is available.

In the case of real estate, by deferring capital gain recognition, like-kind exchanges help get properties into the hands of new owners with the time, resources, and desire to restore and improve them. Without section 1031, many of these properties would languish—underutilized and underinvested—because of the tax burden that would apply to an outright sale.

Like-kind exchanges are also a critical tool for equity building for small businesses, reducing the need for third-party financing. Small firms and entrepreneurs lack access to the capital markets used by large corporations and often struggle to obtain financing from banks and traditional lenders. Like-kind exchanges help small businesses grow organically, without overreliance on debt and leverage. Because owners are able to reinvest all of their equity, without reduction for taxes, they put more equity into their transactions. Thus, properties acquired in a like-kind exchange are subject to a much smaller overall debt burden—10 percent less than similar real estate acquired outside of a like-kind exchange.

By encouraging reinvestment and property improvements, like-kind exchanges create a more dynamic real estate market that generates thousands of jobs in construction, skilled trades, and other real estate-related industries. Recent research by Professors David Ling (Univ. of Florida) and Milena Petrova (Syracuse U.) found that, on average, taxpayers using a like-kind exchange acquire replacement property that is \$305,000 - \$422,000 more valuable than the relinquished property. The study of 1.6 million commercial real estate transactions over an 18-year period is the most comprehensive economic study of real estate like-kind exchanges ever conducted.

Farmers and ranchers use like-kind exchanges to combine acreage or acquire higher grade land or otherwise improve the quality of their operations. Retiring farmers are able to exchange their most valuable asset, their farm or ranch, for other real estate without diminishing the value of their life savings.

Like-kind exchanges facilitate the provision of affordable housing in communities across the country. Section 1031 can fill gaps not covered by other housing incentives, making the development of affordable housing economically viable. The low-income housing tax credit, for example, does not extend to land acquisition costs. New limits on like-kind exchanges would increase the cost of renting an apartment or other home. The Ling Petrova study concluded that an owner would have to raise rents by nearly 12 percent to offset the tax consequences of repealing section 1031.

Land conservation efforts rely heavily on like-kind exchanges to preserve open spaces for public use or environmental protection. Land conservation transactions often involve the exchange of environmentally sensitive areas for other privately held like-kind property, such as adjacent farmland or ranchland. These types of transactions help achieve the public benefit of securing the protection of environmentally significant land and open space for the future while, at the same time, enabling private landowners to preserve capital for expansion or diversification of existing operations, retirement, or other needs.

Restrictions or repeal of section 1031 would harm the broader U.S. economy and job growth. A 2015 study on the macroeconomic impact of like-kind exchanges by senior economists at accounting firm EY found that new restrictions would increase the cost of capital, discourage entrepreneurship and risk-taking, and slow the velocity of investment. The impact of elimination or limitation of section 1031 on the ten most-affected industries would be a decline in annual GDP of \$27.5 billion (\$8.1 to \$13.1 billion for the overall economy). A 2016 analysis by the Tax Foundation estimated overall economic contraction at \$18 billion. According to the EY study, repeal would lengthen holding periods while causing greater reliance on debt financing and less-productive deployment of capital in the economy. Both labor income and after-tax wages would suffer.

Section 1031 does not eliminate or erase tax liability. In more than a third of exchanges, some tax is paid in the year of the exchange. The Ling Petrova study data suggests that at least 88 percent of replacement properties acquired in a like-kind exchange are ultimately disposed of through taxable sales (not subsequent like-kind exchanges), at which time the taxes are paid. In addition, depreciation deductions are immediately reduced going forward.

Lastly, like-kind exchanges help support the tax base at all levels of government. The provision positively affects state and local government budgets because the more frequent turnover of real estate generates property transfer and recording fees, as well as property reassessments that increase the property tax base. Most importantly, because of lower debt and greater capital investment rates, the taxes paid on sale of these properties are significantly greater than that of non-exchanged properties.

In short, like-kind exchange rules generate broad economic and environmental benefits by helping small businesses grow and expand; spurring investment and job growth; and providing a valuable incentive for land conservation. We urge you to include the preservation of like-kind exchanges, without any limitation on gain deferral, as an important component of your economic agenda.

Sincerely,

Alternative & Direct Investment Securities Association
American Farmland Trust
American Land Title Association
American Resort Development Association
American Seniors Housing Association
Asian American Hotel Owners Association
Building Owners and Managers Association International
CCIM Institute
The Conservation Fund
Federation of Exchange Accommodators
Institute of Real Estate Management
International Council of Shopping Centers
Investment Program Association
Land Trust Alliance
NAIOP, Commercial Real Estate Development Association
National Alliance of Forest Owners
National Apartment Association
National Association of Home Builders
National Association of Real Estate Investment Trusts
National Association of REALTORS®
National Multifamily Housing Council
The Nature Conservancy
Peconic Land Trust
Real Estate Roundtable
REALTORS® Land Institute
Society of Industrial and Office REALTORS®