

July 17, 2017

The Honorable Orrin Hatch  
Chairman  
Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Hatch:

In response to your request for comments from stakeholders on tax reform, we are submitting the attached comments urging you to preserve the current availability of like-kind exchange treatment as part of any business tax reform. Thank you for your consideration and your leadership on these important issues.

Sincerely,

**The Like-Kind Exchange Stakeholder Coalition**

## THE LIKE-KIND EXCHANGE STAKEHOLDER COALITION

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The Honorable Orrin Hatch  
Chairman  
Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Hatch:

As you consider ways to create jobs, grow the economy, and raise wages through tax reform, we strongly urge that current law be retained regarding like-kind exchanges under section 1031 of the Internal Revenue Code (“Code”). We further encourage retention of the current unlimited amount of gain deferral.

Like-kind exchanges are integral to the efficient operation and ongoing vitality of thousands of American businesses, which in turn strengthen the U.S. economy and create jobs. Like-kind exchanges allow taxpayers to exchange their property for more productive like-kind property, to diversify or consolidate holdings, and to transition to meet changing business needs. Specifically, section 1031 provides that taxpayers do not immediately recognize a gain or loss when they exchange assets for “like-kind” property that will be used in their trade or business. They do immediately recognize gain, however, to the extent that cash or other “boot” is received. Importantly, like-kind exchanges are similar to other non-recognition and tax deferral provisions in the Code because they result in no change to the economic position of the taxpayer.

Since 1921, like-kind exchanges have encouraged capital investment in the U.S. by allowing funds to be reinvested back into the enterprise, which is the very reason section 1031 was enacted in the first place. This continuity of investment not only benefits the companies making the like-kind exchanges, but also suppliers, manufacturers, and others facilitating them. Like-kind exchanges ensure both the best use of real estate and a new and used personal property market that significantly benefits start-ups and small businesses. Eliminating like-kind exchanges or restricting their use would have a contraction effect on our economy by increasing the cost of capital, slowing the rate of investment, increasing asset holding periods and reducing transactional activity.

A 2015 macroeconomic analysis by Ernst & Young found that either repeal or limitation of like-kind exchanges could lead to a decline in U.S. GDP of up to \$13.1 billion annually.<sup>1</sup> The Ernst & Young study quantified the benefit of like-kind exchanges to the U.S. economy by recognizing that the exchange transaction is a catalyst for a broad stream of economic activity involving businesses and service providers that are ancillary to the exchange transaction, such as brokers, appraisers, insurers, lenders, contractors, manufacturers, etc. A 2016 report by the Tax

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<sup>1</sup> *Economic Impact of Repealing Like-Kind Exchange Rules*, ERNST & YOUNG (March 2015, Revised November 2015), at (iii), available at <http://www.1031taxreform.com/wp-content/uploads/Ling-Petrova-Economic-Impact-of-Repealing-or-Limiting-Section-1031-in-Real-Estate.pdf>.

Foundation estimated even greater economic contraction – a loss of 0.10% of GDP, equivalent to \$18 billion annually.<sup>2</sup>

Companies in a wide range of industries, business structures, and sizes rely on the like-kind exchange provision of the Code. These businesses—which include real estate, construction, agricultural, transportation, farm / heavy equipment / vehicle rental, leasing and manufacturing—provide essential products and services to U.S. consumers and are an integral part of our economy.

A microeconomic study by researchers at the University of Florida and Syracuse University, focused on commercial real estate, supports that without like-kind exchanges, businesses and entrepreneurs would have less incentive and ability to make real estate and other capital investments.<sup>3</sup> The immediate recognition of a gain upon the disposition of property being replaced would impair cash flow and could make it uneconomical to replace that asset. This study further found that taxpayers engaged in a like-kind exchange make significantly greater investments in replacement property than non-exchanging buyers.

Both studies support that jobs are created through the greater investment, capital expenditures and transactional velocity that are associated with exchange properties. A \$1 million limitation of gain deferral per year, as proposed by the Obama Administration<sup>4</sup>, would be particularly harmful to the economic stream generated by like-kind exchanges of commercial real estate, agricultural land, and vehicle / equipment leasing. These properties and businesses generate substantial gains due to the size and value of the properties or the volume of depreciated assets that are exchanged. A limitation on deferral would have the same negative impacts as repeal of section 1031 on these larger exchanges. Transfers of large shopping centers, office complexes, multifamily properties or hotel properties generate economic activity and taxable revenue for architects, brokers, leasing agents, contractors, decorators, suppliers, attorneys, accountants, title and property / casualty insurers, marketing agents, appraisers, surveyors, lenders, exchange facilitators and more. Similarly, high volume equipment rental and leasing provides jobs for rental and leasing agents, dealers, manufacturers, after-market outfitters, banks, servicing agents, and provides inventories of affordable used assets for small businesses and taxpayers of modest means. Turnover of assets is key to all of this economic activity.

In summary, there is strong economic rationale, supported by recent analytical research, for the like-kind exchange provision's nearly 100-year existence in the Code. Limitation or repeal of section 1031 would deter and, in many cases, prohibit continued and new real estate and capital investment. These adverse effects on the U.S. economy would likely not be offset by lower tax rates. Finally, like-kind exchanges promote uniformly agreed upon tax reform goals such as economic growth, job creation and increased competitiveness.

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<sup>2</sup> *Options for Reforming America's Tax Code*, Tax Foundation (June, 2016) at p79, available at <http://taxfoundation.org/article/options-reforming-americas-tax-code>.

<sup>3</sup> David Ling and Milena Petrova, *The Economic Impact of Repealing or Limiting Section 1031 Like-Kind Exchanges in Real Estate* (March 2015, revised June 2015), at 5, available at <http://www.1031taxreform.com/wp-content/uploads/Ling-Petrova-Economic-Impact-of-Repealing-or-Limiting-Section-1031-in-Real-Estate.pdf>.

<sup>4</sup> *General Explanations of the Administration's Fiscal Year 2017 Revenue Proposals*, at 107, available at <https://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2017.pdf>.

Thank you for your consideration of this important matter.

Sincerely,

Air Conditioning Contractors of America  
American Car Rental Association  
American Rental Association  
American Seniors Housing Association  
American Truck Dealers  
American Trucking Associations  
Associated Equipment Distributors  
Associated General Contractors of America  
Avis Budget Group, Inc.  
Building Owners and Managers Association (BOMA) International  
C.R. England, Inc.  
Equipment Leasing and Finance Association  
Federation of Exchange Accommodators  
International Council of Shopping Centers  
Investment Program Association  
NAIOP, the Commercial Real Estate Development Association  
National Apartment Association  
National Association of Home Builders  
National Association of Real Estate Investment Trusts  
National Association of REALTORS®  
National Automobile Dealers Association  
National Business Aviation Association  
National Multifamily Housing Council  
National Ready Mixed Concrete Association  
National Stone, Sand and Gravel Association  
Truck Renting and Leasing Association

cc: Members of the Senate Finance Committee