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Stephen L. Robison, J.D., LL.M.

Providing tax advice on
like kind exchanges.

Strategic Property Exchanges, LLC
serves as Qualified Intermediary on
Section 1031 Exchanges,
including forward, reverse, and
parking arrangements.

For more information

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**1031 Advisor is
focused on helping
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*Strategic Property Exchanges, LLC: (n) defined as Competent, Proficient,
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FURTHER INSIGHT INTO THE MEANING OF **HELD FOR INVESTMENT** AND
HOW LONG A TAXPAYER MUST HOLD A PROPERTY **AFTER** THE
EXCHANGE....

In recently published Private Letter Ruling 200521002 the IRS ruled that property acquired as replacement property in a like-kind exchange by a trust later distributed to trust beneficiaries upon liquidation would not be precluded from being considered as held-for business use or investment as required by IRC Sec. 1031.

In the Private Letter Ruling a private testamentary trust (the "Trust") was formed in order to administer assets, including cash and real estate. Under a plan of termination on a specified date the Trust will distribute its cash assets to its beneficiaries, and will contribute its real estate assets to a newly formed limited liability company (LLC). The interests in LLC will then be distributed to the Trust's beneficiaries in liquidation of the Trust.

Prior to the planned termination the Trust entered into an otherwise qualified deferred exchange of real estate through a qualified intermediary for a like-kind replacement property. The Trust represented that it intends to hold the replacement property for investment purposes until the Trust terminates on a specified date. The Private Letter Ruling did not say how much time will have elapsed between the completion of the exchange and the contribution of property to the LLC or liquidation of the Trust.

Based on these facts the IRS ruled that the Trust's termination and distribution of its assets does not preclude the replacement property received by the Trust from being considered held for business use or investment purposes.

The IRS reasoned that the contribution of real estate assets from the Trust to the LLC in which the Trust was initially the sole member is a non-event for tax purposes because at the time of this distribution the LLC is disregarded for federal tax purposes. Regarding the termination of the Trust and the distribution of the LLC interests to the beneficiaries, the IRS reasoned that because (1) the Trust represented that it will hold the replacement property for investment purposes until it terminates pursuant to its own plan, and (2) that the termination date was fixed and could not be changed, the result is that the Trust did not acquire the replacement property in order to dispose of the property pursuant to a prearranged plan. Therefore, the exchange transaction is independent from the distribution of property under the termination.

This ruling may have broader implications for Sec. 1031 exchanges followed by distributions. In some limited circumstances where a dissolution is required by either court order or pre-existing contractual provisions the IRS might not challenge the qualification of replacement property as held for business use or investment.