NAR Issue Brief
Like-Kind Exchanges

What is the issue and how is it treated under current law?
Current tax law permits an investor in real estate to defer capital gains taxes on exchanging an investment property for another property of like kind that is also held for investment. Taxpayers must satisfy numerous requirements and complete both a sale of the held property and a purchase of the replacement property within 180 days. Property is of like kind if it is of the same nature or character. Most exchanges of real property qualify as like-kind exchanges.

When was this provision put in the tax code?
The first tax-deferred like-kind exchange was authorized as part of the Revenue Act of 1921. The first modern tax-deferred like-kind exchange using an intermediary was approved in 1935. The present-day definitions and descriptions of the like-kind exchange rules were added to the Internal Revenue Code in 1954, and have been firmly fixed in the law since then. The like-kind exchange rules have not been significantly modified since 1991.

Why was it put in the tax code?
Congress has long recognized that when an investor sells a property to buy a similar one, no economic gain has been achieved. Rather, there has simply been a transfer of the investment from one property to another property of like kind. In other words, the form of the investment has changed, but the substance of it has not.

What would be the impact on those Americans if the provision were changed or eliminated?
The current law exchange rules provide investors a great deal of flexibility in managing their real estate portfolio. Real estate is essentially an illiquid asset that requires substantial commitments of cash. Without this flexibility, the free movement of property and capital that is vital to the proper functioning of capital markets would be reduced, and economic growth and job creation would suffer.

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