

September 3, 2021

The Honorable Richard Neal
Chairman
House Committee on Ways and Means
1105 Longworth House Building
Washington, DC 20515

The Honorable Ron Wyden
Chairman
Senate Committee on Finance
219 Dirksen Senate Building
Washington, DC 20510

Dear Chairmen Neal and Wyden:

As you develop and consider budget reconciliation legislation, the undersigned organizations write to emphasize the important contribution that like-kind exchanges make to job creation, economic mobility, and other shared social and environmental objectives. New restrictions on section 1031 of the tax code, if enacted, would undermine the economic recovery and cause unintended and unnecessary risks to the strength and stability of U.S. real estate. For these reasons, and those described in greater detail below, we urge you to preserve current law as it relates to like-kind exchanges.

Like-kind exchanges of real estate under section 1031 support jobs and investment; the health of U.S. commercial real estate and real estate markets; and the preservation of family-owned farms, ranches, and forestland. Communities and nonprofit organizations use like-kind exchanges to conserve land for the benefit of the public and future generations. Gains reinvested in new property through an exchange create a ladder of economic opportunity for small and minority-owned businesses and entrepreneurs, and generate much-needed tax revenue for States and localities. Also, like-kind exchanges increase the supply of affordable rental housing by filling gaps in housing supply not covered by other incentives. For these reasons, and those described below, like-kind exchanges will continue to contribute significantly to the Nation's economic well-being and help us recover more quickly from the pandemic.

The [unanimous vote](#) in the Senate on August 10 to amend the budget resolution to include [language](#) specifically aimed at preserving the current law tax treatment of like-kind exchanges further demonstrates the overwhelming and widespread support for section 1031 and its valuable economic contributions.

Like-kind exchanges are accelerating the economic recovery from the pandemic by preventing real properties from languishing, underutilized and underinvested. By allowing property owners to defer capital gain when one property is exchanged for another, like-kind exchanges help get real estate into the hands of new owners with the time, resources, and desire to restore and improve them. This is particularly important given the need to repurpose or renovate many properties, particularly in the office, retail and hotel sectors, to meet post-pandemic needs. Without section 1031, many of these properties would languish—underutilized and underinvested—because of the tax burden that would apply to an outright sale. In this way, like-kind exchanges are a powerful tool that accelerates domestic investment.

Rules for like-kind exchanges are narrowly tailored and well-designed. Congress first codified like-kind exchanges in 1921, not long after enactment of the income tax itself. Over the last four decades, you and your Colleagues have thoughtfully modified and improved the provision. Since 1984, laws have eliminated potential abuses, created strict and uniform rules and procedures for an exchange, and tightened section 1031 to avoid unintended results. Most recently, in 2017, Congress narrowed the provision to eliminate like-kind exchanges for all assets other than real property. As a result of these efforts, like-kind exchanges are now a deeply ingrained and beneficial feature of commercial real estate markets. Today, exchanges represent a large share of overall real estate transaction activity. Recent research by Professors David Ling (Univ. Fla.) and Milena Petrova (Syracuse U.) estimates that 10-20 percent of commercial real estate transactions involve a like-kind exchange.

Like-kind exchanges help small and minority-owned businesses expand and grow. Veteran-owned, women-owned, and minority-owned businesses have been hit especially hard by the pandemic. These firms and other small businesses use like-kind exchanges to expand and build equity in their companies without having to rely on bank loans and other third-party lending that can be difficult to obtain. Small firms and entrepreneurs lack access to the deep capital markets that finance the activities of large corporations. Like-kind exchanges help small and minority-owned businesses grow organically, without overreliance on unsustainable levels of debt and leverage. Because owners are able to reinvest their proceeds on a tax-deferred basis, properties acquired in a like-kind exchange carry less overall debt—30 percent less than similar real estate acquired outside of a like-kind exchange.

Like-kind exchanges are an engine of job creation. New research by EY estimates that like-kind exchanges support 568,000 jobs generating over \$55 billion of annual value added, including \$27.5 billion of labor income. Employment directly and indirectly supported by exchanges includes jobs for skilled tradesmen, architects, designers, building material suppliers, movers, building maintenance and cleaning staff, security, landscapers, qualified intermediaries, real estate brokers, title insurers, settlement agents, attorneys, accountants, lenders, property inspectors, appraisers, surveyors, insurers, and contractors. By encouraging the reinvestment of capital and stimulating property improvements, exchanges create a more dynamic, job-creating real estate market.

Farmers, ranchers, and forest owners heavily rely on like-kind exchanges. Farmers, ranchers, and forest owners use like-kind exchanges to combine acreage, acquire higher-grade land, mitigate environmental impacts, or otherwise improve the quality of their operations. They may use like-kind exchanges to reconfigure their businesses so that young or beginning farmers can join the business. 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 promote land conservation and environmental protection. Land conservation organizations rely 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 less sensitive privately held property, which can be

put into production. These transactions protect environmentally significant land and open space for the future while enabling private landowners to preserve capital for expansion or diversification of existing operations, retirement, or other needs.

Increasing the supply of affordable rental housing requires like-kind exchanges.

Like-kind exchanges can fill gaps in the housing supply not covered by other incentives for the development of affordable housing. Multifamily housing transactions represent 40 percent of real estate like-kind exchanges. Expanding workforce housing will require significant investment of private capital. However, tax incentives like the low-income housing tax credit do not apply to land acquisition costs. Investors can use section 1031 to acquire land for the development of new housing. New limits on like-kind exchanges would increase the cost of rental housing. The Ling-Petrova study concluded that an owner would have to raise rents significantly on tenants to offset the tax consequences of repealing section 1031.

States and localities depend on like-kind exchanges for tax revenue. Like-kind exchanges generate much-needed tax revenue for States and localities. The more frequent turnover of real estate attributable to section 1031 generates property transfer and recording fees, as well as property reassessments that increase the tax base. Most importantly, because of lower debt and greater capital investment rates, the taxes paid on the subsequent sale of these properties are significantly greater.

For many Americans, like-kind exchanges are a principal tool for retirement savings. The self-employed often own real estate as part of, or incidental to, a small business venture, such as a farm, restaurant, or service business. These individuals often lack a company-sponsored 401(k) plan, and reinvesting proceeds from the sale of actively managed real estate into institutionally managed, passive interests in real estate through a like-kind exchange may be their only form of retirement saving. Much like traditional pension and deferred contribution plans, these arrangements allow small business owners and the self-employed to generate long-term income and a secure retirement. Similarly, prudent portfolio management by institutionally managed real estate funds using like-kind exchanges provides important diversification in retirement savings options for workers investing through 401(k) plans.

Like-kind exchanges reduce the cost of capital and make the economy more efficient. Section 1031 expands opportunities for businesses to relocate to better, more productive locations. The provision increases taxpayers' ability to exchange older assets for newer assets better suited to the needs of surrounding communities and tenants. By eliminating the "lock-in" effect caused by taxing prior gain at the time of a transaction, exchanges lift the velocity of reinvestment—the rate at which businesses convert assets to better match their business needs, to operate more efficiently, or to generate more income. Taxpayers using a like-kind exchange acquire replacement property that is valued more than 15 percent higher on average than the relinquished property.

Additional federal taxes are collected in the years following a like-kind exchange. Capital gain deferred in an exchange reduces the owner's tax basis in the replacement property. This results in smaller depreciation deductions going forward. In more than a third of exchanges, property owners pay some capital gains tax in the year of the exchange because of

differences in the values of the replacement and relinquished property. The overwhelming majority of replacement properties acquired in a like-kind exchange are ultimately disposed of through fully taxable sales (not subsequent like-kind exchanges). The Ling-Petrova study found that less than 20% of replacement properties are disposed of through a subsequent like-kind exchange.

Like-kind exchanges help stabilize property values and real estate markets during an economic crisis. Finally, like-kind exchanges helped stabilize commercial real estate markets during the COVID-19-induced economic crisis, and they will continue to do so in its aftermath. During periods of economic stress, exchanges stimulate commerce and facilitate needed price discovery when buyers, sellers, or lenders are otherwise reluctant to engage in transactions. The ability to defer the gain on the relinquished property will often motivate the acquisition of replacement property by a buyer who would otherwise wait until economic conditions had fully recovered. This activity can effectively “unfreeze” property markets and helps avoid deeper swings in property values during severe economic downturns. Moreover, in the post-pandemic economy, many real estate assets will need to be repurposed to meet shifts in demand. Section 1031 will facilitate a faster and smoother transition, accelerating the economic recovery.

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We share your commitment to addressing structural weaknesses and inequalities in the economy. Today, following years of careful legislating and regulatory rulemaking, section 1031 supports job growth, creates a ladder of economic opportunity for small businesses, cash-poor entrepreneurs, and farm, ranch, and forest owners, and constitutes an important tool for the environmental conservation of land for future generations. For these reasons, like-kind exchanges will have an important role in the economic recovery and beyond. If you or your staff would like additional information or have questions regarding like-kind exchanges, please do not hesitate to contact Ryan McCormick of The Real Estate Roundtable at (202) 639-8400 or rmccormick@rer.org.

Sincerely,

ADISA—Alternative & Direct Investment Securities Association
American Farm Bureau Federation
American Hotel & Lodging Association
American Land Title Association
American Resort Development Association
American Seniors Housing Association
American Society of Farm Managers and Rural Appraisers
Asian American Hotel Owners Association
Associated Builders and Contractors
Building Owners and Managers Association (BOMA) International
CCIM Institute
Council for Affordable Rural Housing
Commercial Real Estate Finance Council

Federation of Exchange Accommodators
Forest Landowners Association
ICSC
Institute for Portfolio Alternatives
Institute of Real Estate Management
Land Trust Alliance
Latino Hotel Association
Leading Builders of America
Manufactured Housing Institute
Mortgage Bankers Association
NAIOP, the Commercial Real Estate Development Association
Nareit
National Alliance of Forest Owners
National Apartment Association
National Association of Black Hotel Owners, Operators and Developers
National Association of REALTORS®
National Cattlemen's Beef Association
National Corn Growers Association
National Leased Housing Association
National Multifamily Housing Council
REALTORS® Land Institute
Society of Industrial and Office REALTORS®
Southeastern Lumber Manufacturers Association
The Conservation Fund
The Nature Conservancy
The Real Estate Roundtable

CC: The Honorable Kevin Brady
House Ways and Means Committee Ranking Member

The Honorable Mike Crapo
Senate Finance Committee Ranking Member

The Honorable Nancy Pelosi
Speaker of the House

The Honorable Charles Schumer
Senate Majority Leader

The Honorable Kevin McCarthy
House Minority Leader

The Honorable Mitch McConnell
Senate Minority Leader