

**Parker Fielder Oil and Gas Tax Conference
November 21-22, 2019**

Section 1031 & QOZ Update for Oil & Gas

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Agenda

- Tax Cuts and Jobs Act
- What is “real property”?
- Oil & Gas Assets
- Estate of Bartell
- Qualified Opportunity Zones

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Tax Cuts and Jobs Act

- Final bill repeals Section 1031 for personal property, but preserves Section 1031 for like kind “real property”.
 - Preserves prohibition against exchange of “dealer” property.
- Changes generally effective after 12/31/17; however, a “grandfather” exception is provided for any exchange commenced prior to such date.
- New expensing rule for personal property softens the blow, but is only temporary; afterwards, taxpayers will have fully depreciated personal assets with no ability to defer gain via a 1031 exchange.
- The “real property only” rule places heightened emphasis on the definition of real property for purposes of a 1031 exchange.

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Impact of Tax Cuts and Jobs Act

- Things that no longer qualify:
 - Art;
 - Aircraft;
 - Heavy equipment;
 - Rental cars;
 - Any type of personal property!
- Also impacts the personal property aspect of mixed asset exchanges:
 - Hotels (real property + FF&E);
 - Farms & Ranches (real property + farm/ranch equipment);
 - Operating Oil & Gas Lease (real property + well equipment);
 - Factories/Plants (real property + production equipment).
- Solutions
 - Purchase price allocations;
 - Or sell/buy the personal property separately for cash.

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“Like Kind”

- The real properties exchanged must be of “like kind”; normally, this is an extremely broad standard.
- Treas. Reg. § 1.1031(a)-1(b): “the words “like kind” have reference to the nature or character of the property and not to its grade or quality. . . . The fact that any real estate involved is improved or unimproved is not material, for that fact relates only to the grade or quality of the property and not to its kind or class.”
- Examples from Treas. Reg. § 1.1031(a)-1(c):
 - “city real estate for a ranch or farm”;
 - “a leasehold of a fee with 30 years or more to run for real estate”;
 - “improved real estate for unimproved real estate”.

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So... What is Real Property?

- How is “real property” defined?
- Does state law control?
- Or is it a federal standard?
- Is it true that ALL “real property” is of like kind to other “real property”?
- Notably, the 2019-2020 Initial PGP (Oct 8, 2019), under PART 1. IMPLEMENTATION OF TAX CUTS AND JOBS ACT (TCJA), contains the following entry: “40. Guidance under §1031 concerning the definition of “real property.”

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First appeared as part of the conference materials for the
15th Biennial Parker C. Fielder Oil and Gas Tax Conference session
"1031 Update for Oil & Gas"