
CLIENT ADVISORY

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**IRC § 1031 LIKE-KIND EXCHANGES NOW APPLY TO
CERTAIN TYPES OF INTANGIBLE ASSETS**

IRC § 1031 and the like-kind exchange rules have been used for a number of years to permit taxpayers to defer gain recognition (and, hence, payment of tax) on certain business assets when those assets are replaced with “like-kind” property (i.e., real estate, tangible assets such as motor vehicles, equipment and machinery).

Based on a 2006 technical advice memo, the IRS has denied like-kind exchange treatment for trademarks, trade names, and other customer-based intangible assets. However, the IRS has recently announced a reversal of that position, advising that “intangibles, such as trademarks, trade names/mastheads and customer-based intangibles that can be separately described and valued apart from goodwill qualify as like-kind property under § 1031.”

This change in positions by the IRS opens up new tax-deferral opportunities in business/business asset sales where the proceeds from the sale will be used, in whole or in part, to acquire another business or business assets.

**MORE BUSINESSES NOW ELIGIBLE FOR SMALL BUSINESS
ADMINISTRATION (SBA) LOANS**

Due to a just-announced temporary (first week of May 2009 through the end of September 2010) alternative size standard for SBA 7(a) loans, more than 70,000 additional businesses, including auto dealers, will be eligible. The current standards for qualification as a “small business” for SBA purposes use revenue or number of employees, but the temporary standards will allow qualification on net worth (\$8,500,000 or less) or average net income (average net income after federal income taxes). The temporary changes in the standards for 7(a) loans adopt the alternate size standards earlier made available for SBA 504 loans (used to finance real estate or other fixed assets.)

2010 CONTRIBUTION LIMITS AND REQUIREMENTS-HEALTH SAVINGS ACCOUNTS

In 2010, the maximum amount allowed as a contribution for a high deductible health plan (HDHP) for an individual with self-coverage only increases from \$3,000 to \$3,050 and for family coverage increases from \$5,950 to \$6,150. For 2010, HDHPs must have an annual deductible of at least \$1,200 for individual coverage and at least \$2,400 for family coverage. Total out-of-pocket expenses under HDHPs cannot exceed, for 2010, \$5,950 for individual coverage and \$11,900 for family coverage.