

**AMERICAN BAR ASSOCIATION TAX SECTION – 2007 SECTION 1031 STATE SURVEY Q & A**  
**(Final Document – Out of 56 Jurisdictions Reporting)**

**LEGEND:**

**\*\*Received 2007 Response**

**\*Received 2006 Response**

**N/A – Not Applicable**

**N/R – No Response in 2005 or 2006**

STATE	QUESTIONS													
	<b>Q1:</b> Does State impose rules/restrictions in addition to federal requirements on what qualifies as "like kind" replacement property in order to qualify for a tax deferral?	<b>Q2:</b> If taxpayer consummates tax deferred exchange of personal property when some of like-kind property is located outside of or is moved outside State does State impose tax treatment different from federal tax deferral treatment?	<b>Q3:</b> Does State require special reporting of an exchange on State tax form?	<b>Q4:</b> If taxpayer consummates partially tax deferred exchange in which non-like property is received, is gain reportable in your State computed with reference to depreciation/cost recovery rates allowed in State or is federal cost recovery/depreciation rates used to compute gain in exchange?	<b>Q5:</b> Does your jurisdiction impose a withholding tax, special estimated tax or similar tax on taxable portion of any exchange proceeds?	<b>Q6:</b> Are tax deferral laws applicable in your State for like-kind exchanges different for resident and non-resident taxpayers in any way?	<b>Q7:</b> Is single owner LLC that is disregarded for federal income tax purposes also disregarded for State income tax purposes?	<b>Q8:</b> Is single-owner LLC that is disregarded for federal income tax purposes also disregarded for purposes of State's sales taxes?	<b>Q9:</b> If State imposes real estate transfer tax, does State impose real estate transfer tax when qualified intermediary or taxpayer involved in exchange transfers ownership of limited liability company that holds record title to exchange property or is the real estate transfer tax only applied when record title to the exchange property is conveyed?	<b>Q10:</b> If State imposes sales or similar tax does State collect sales tax when qualified intermediary or taxpayer involved in exchange transfers ownership of membership interest in LLC that holds title to exchange property or is sales tax only applied when title to exchange property is transferred?	<b>Q11:</b> Does State impose special licensing, bonding or registration requirements on qualified intermediaries or exchange accommodation titleholders that provide exchange services in State?	<b>Q12:</b> Does State recognize special federal income tax treatment?	<b>Q13:</b> (a) Does your State recognize the federal income tax treatment of safe harbor parking arrangements? (b) Are there any unusual features?	
<b>Alabama</b> <b>**no change</b>	No	No	Yes <sup>1</sup>	Federal	No	No	Yes	Yes	No Tax	Applied on change of record or registered title	Maybe <sup>2</sup>	<sup>3</sup>	(a)	(b)
<b>Alaska*</b> <b>no change</b>	No	No	No	State <sup>4</sup>	No individual income tax	No	Yes	N/A no sales tax	N/A	N/A	No	N/A	(a) Yes	(b) <sup>5</sup>
<b>Arizona*</b> <b>no change/** no change</b>	No	No	No	State	No	No	Yes	No	N/R	N/R	No	Yes	(a) Yes	(b)

<sup>1</sup> Place on Schedule D as a sale, but no other form should be filed. (Individuals only).

<sup>2</sup> Maybe. There is a privilege license under 40-21-41 for abstract companies, which they would need if part of their service is furnishing abstracts of title. If they are real estate brokers, they would need the privilege license under 40-12-149. Also, a real estate broker would need to register with the Real Estate Commission (334-242-5544). No other applicable licenses are administered by this Department.

<sup>3</sup> Generally, Alabama conforms to federal income tax treatment of like-kind exchanges pursuant to 26 U.S.C. §1031. Questions 11 and 12 have not been addressed in Alabama and we decline to answer. See Alabama statutes Section 40-18-3(c) – Like-kind Exchanges.

<sup>4</sup> Federal rates apply—non-oil & gas corporations; State rates apply—oil & gas corps have Alaska-specific depreciation rules.

<sup>5</sup> Alaska does not impose a personal income tax or state sales tax.

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Arkansas	Yes <sup>6</sup>	Yes <sup>7</sup>	Yes	State	No	No	Yes	No <sup>8</sup>	Applied on change of record or registered title	Applied on change of record or registered title	N/R	Yes	(a) No <sup>9</sup>	(b)
California	No	No	Yes <sup>10</sup>	Federal	Yes <sup>11</sup>	No	No	Yes	Applied on change of record or registered title	Applied on change of record or registered title	No	Yes	(a) Yes	(b) <sup>12</sup>
Colorado **	No	No	No	Federal	No <sup>13</sup>	No	Yes	No <sup>14</sup>	N/A <sup>15</sup>	Applied on change of record or registered title <sup>16</sup>	No	Yes	(a) Yes	(b)

<sup>6</sup> Section 1031 was not adopted. ACA 26-51-412(a) requires assets be valued at fair market value if it can be determined. If fair market value cannot be determined, no gain or loss is recognized.

<sup>7</sup> Gains and losses are determined at time of exchange. There is no gain deferred and no loss carryforward or carryback. Location of property is not relevant.

<sup>8</sup> All taxpayers subject to the application of Arkansas Sales or Use Tax must comply. A single-owner LLC is subject to all provisions.

<sup>9</sup> Have not adopted provisions of Rev. Proc. 2000-37.

<sup>10</sup> Federal Form 8824 must be filed for California state tax purposes if the California basis differs from Federal Basis. Any taxable boot must be reported on California Schedule D-1.

<sup>11</sup> Withholding tax of 3 1/3% on all boot if boot is greater than \$1,500.

<sup>12</sup> Question 9: The state of California does not impose a real estate transfer tax. However, various counties in California impose a real estate transfer tax. Question 10: The state of California does not impose a sales tax on the sale of real property.

<sup>13</sup> 2007: Non-residents are subject to the withholding provisions of 39-22-604.5 C.R.S.

<sup>14</sup> The SMLLC can be disregarded for sales tax if a request is filed with the Department and approval is granted. 2007: But see 39-26-102(10) C.R.S. (Please disregard prior answer to this question).

<sup>15</sup> 2007: Certain local jurisdictions may impose real estate transfer tax.

<sup>16</sup> 2007: However, the State may apply a step or sham transaction review.

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<b>Connecticut</b> *-no change **no change	No	No	No	Federal <sup>17</sup>	No	No	Yes	No <sup>18</sup>	Applied on change of ownership of LLC <sup>19</sup>	Applied on change of ownership of LLC <sup>20</sup>	No <sup>21</sup>	Yes	(a) Yes	(b)
<b>Delaware</b>													(a)	(b)
<b>District of Columbia</b>	No	No	No	Federal	No	No	Yes	No <sup>22</sup>	Applied on change of record or registered title	N/A	No	Yes	(a) Yes	(b) None

<sup>17</sup> Gain is computed in the same manner as it is for federal income tax purposes. The amount deductible for depreciation and cost recovery is ultimately the same but the timing of the deduction may differ. See Special Notices 2002(10), 2002(12) and 2003(21).

<sup>18</sup> See Special Notice 99(3).

<sup>19</sup> The real estate conveyance tax would not apply, but the controlling interest transfer tax could apply.

<sup>20</sup> The sales tax would not apply, but the controlling interest transfer tax could apply.

<sup>21</sup> Connecticut tax laws impose no such requirement.

<sup>22</sup> But transaction may be considered as casual and isolated and/or subject to sales in bulk provision.

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<b>Florida*-no change **no change</b>	No	No	No	Federal	No	No	Yes	No <sup>23</sup>	Applied on change of record or registered title	Applied on change of record or registered title <sup>24</sup>	No	Yes <sup>25</sup>	(a) Yes <sup>26</sup> (b)
<b>Georgia*</b>	Yes <sup>27</sup>	Yes See Q1	No	State <sup>28</sup>	Yes <sup>29</sup>	Yes-See Answer to Q5	Yes	No-treated as separate entity	Applied on change of record or registered title	Applied on change of record or registered title	<sup>30</sup>	Yes-but GA is not a community property state	(a) Yes (b)

<sup>23</sup> Section 608.471(3), F.S., states that LLCs that are disregarded for corporate income tax purposes are treated as separate legal entities for all non-income tax purposes.

<sup>24</sup> Sales tax applies not only on the transfer of title, but also to the transfer of possession for consideration.

<sup>25</sup> Florida does not have a personal income tax.

<sup>26</sup> Section 220.44, F.S., allows the Department of Revenue to adjust any agreement, understanding or arrangement which causes Florida net income to be reflected improperly.

<sup>27</sup> For tax years beginning 1/1/04 Georgia's treatment is the same as federal. For years beginning before 1/1/04 Georgia taxed Georgia property exchanged for non-Georgia property.

<sup>28</sup> Georgia has not adopted 168(k) depreciation and did not adopt increased Section 179 until 1/1/05.

<sup>29</sup> **2006 Response: 4% of the gain on the sale if the property is sold by a nonresident.** (2005 response: 3% of the gross proceeds or (if elected) the gain on the sale if the property is sold by a nonresident)

<sup>30</sup> Please contact Georgia Secretary of State.

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Hawaii* **no change	No	No	Yes <sup>31</sup>	State	Yes <sup>32</sup>	No	Yes	No <sup>33</sup>	Applied on change of record or registered title	Applied on change of record or registered title	No	No-Hawaii is not a community property state	(a) Yes	(b)
Idaho*-no change/** no change	No	No	No	Federal <sup>34</sup>	No	No	Yes	No <sup>35</sup>	N/A	Applied on change of record or registered title	<sup>36</sup>	Yes	(a) Yes	(b) N/A
Illinois*-no change/** no change	No	No	No	Federal	No	No	Yes	No <sup>37</sup>	Applied on change of record or registered title	Applied on change of record or registered title	No	Yes	(a) Yes	(b)
Indiana**	No	No	No	State	No	No	Yes	Yes <sup>38</sup>	N/R	N/R	No	Yes	(a) Yes	(b) 2007

<sup>31</sup> State of Hawaii requires the submission of Federal Income Tax Form 8824.

<sup>32</sup> HRS §235-68. Every transferee is required to withhold and pay to Department of Taxation 5% on the amount realized on the disposition of Hawaii real property by a transferor who is not a Hawaii resident, unless the disposition is exempt from withholding.

<sup>33</sup> The State of Hawaii does not have a sales tax. All business entities, including a single member LLC, are taxable at the entity level for purposes of the general excise tax and other gross receipts and transaction-type Hawaii tax laws.

<sup>34</sup> Federal rates apply with the exception of 30% and 50% bonus depreciation. Idaho Code §63-30220

<sup>35</sup> There are exemptions for related party transactions, however. See I.C. Sec. 63-3622K.

<sup>36</sup> Please contact Idaho Real Estate Commission 208-334-3285 or www.irec.idaho.gov.

<sup>37</sup> An LLC, whether or not disregarded for Federal income tax purposes, is treated as a taxpayer for all sales and use tax purposes.



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<b>Iowa*-no change** no change</b>	No	No	No	Federal	No	No	Yes	Yes	Applied on change of record or registered title	Applied on change of ownership of LLC	No	Yes	(a) Yes (b)
<b>Kansas</b>	No	No	No	Federal	No	No	Yes	No	40	41	No	Yes	(a) Yes (b) 42
<b>Kentucky *</b>	No	No	No	State	No <sup>43</sup>	No	No <sup>44</sup>	No	N/R	Yes <sup>45</sup>	N/R	46	(a) Yes (b)

<sup>40</sup> Kansas does not impose a real estate transfer tax.

<sup>41</sup> Yes. Use tax would apply to the LLC that holds the property.

<sup>42</sup> The starting point for the calculation of the Kansas income tax is federal adjusted gross income (FAGI). As a result, the treatment accorded a Section 1031 like-kind exchange on the federal level will flow through to Kansas as part of FAGI. This is also true of the treatment of "disregarded" entities, "safe harbor" rules, etc. Kansas withholding on Section 1031 like-kind exchanges is also linked to federal withholding in that if federal withholding is not required state withholding is not required.

<sup>43</sup> Unless gains are from a partnership subject to nonresident withholding 103 KAR 18:070.

<sup>44</sup> **2006 Response: Yes-if the single member is a corporation. No if the single member is an individual.** 2005 response: For tax years beginning on or after January 1, 2005, limited liability companies (including single member LLCs) are subject to Kentucky Corporate Income Tax.

<sup>45</sup> Sales tax applies to receipts from the transfer of ownership or title of tangible personal property unless a specific exemption is applicable.

<sup>46</sup> Adopted for REITs and Homeowners Associations.

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<b>Louisiana</b> */**no change	No <sup>47</sup>	No	No	Federal <sup>48</sup>	No <sup>49</sup>	No	Yes <sup>50</sup>	No <sup>51</sup>	N/A	<sup>52</sup>	No <sup>53</sup>	Yes <sup>54</sup>	(a) Yes (b) No <sup>55</sup>
<b>Maine</b>	No	No	No	Federal	Yes <sup>56</sup>	No	Yes	No <sup>57</sup>	Applied on change of ownership	Applied on change of record or registered title	No Response <sup>58</sup>	Yes	(a) Yes (b)

<sup>47</sup> 7/26/06 response: No, but it does for corporations with respect to Section 1033 gain attributable to non-LA replacement property.

<sup>48</sup> 7/26/06 response: After 1986 based on Federal, but there are post-1986 adjustments to basis for certain credits allowable under Federal tax law, but not under LA tax law (see LRS 47:287.751).

<sup>49</sup> 7/26/06 response: No, except for tax imposed on nonresident members or partners of entities treated as partnerships under Louisiana income tax law and engaged in activities in LA—see LRS 47: 201 (this answer is similar to footnote 38, with respect to the Kentucky response).

<sup>50</sup> 7/26/06 response: Yes, for Louisiana income tax purposes, but not for Louisiana corporate franchise tax purposes—see LRS 12:1368 )and RS 47:301.

<sup>51</sup> 7/26/06 response: No, see LRS 47:301(4) and RS 47: 301(8) (this answer similar to footnote 57, with respect to Minnesota response). 2006 response: If a SMLLC owed sales tax, LA would attempt to collect from the SMLLC who was actually a party to the sales transaction. If it appeared that the factors necessary to pierce the corporate veil were present, then the State might look through the LLC.

<sup>52</sup> Tax applied only on change of record or registered title and then only to certain tangible personal property not otherwise excluded as an occasional sale or under some other provision.

<sup>53</sup> 7/26/06 response: No, but a local Parish or City occupational license tax would be imposed on a qualified intermediary or accommodation titleholder.

<sup>54</sup> 7/26/2006 response: Louisiana is a community property state.

<sup>55</sup> 7/26/06 response: (a) yes. (b) No, but we have the identical issue that exists in Montana, namely that the Louisiana Revenue Dept. would interpret our definition of Louisiana source income to include gain realized on the sale or exchange of the Louisiana property, but not recognized under Section 1031, and to retain its Louisiana source income classification when the deferred gain is recognized for Federal income tax purposes (this answer is similar to footnote 64, with respect to the Montana response—CHECK FOOTNOTES BECAUSE THEY WILL HAVE BEEN CHANGE UPON THE ABOVE REVISIONS.)

<sup>56</sup> If Seller is non-resident, withholding is required at 2.5% of consideration. See 36 MRSA Section 5250-A. (36 changed from 26 in 2007 response).



Maryland **no change	No	No	No	State <sup>59</sup>	Yes <sup>60</sup>	No	Yes	No <sup>61</sup>	Applied on change of record or registered title	Applied on change of record or registered title	No	<sup>62</sup>	(a) Yes	(b) Yes <sup>63</sup>
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<sup>57</sup> It is a separate legal entity for Maine sales tax purposes.

<sup>58</sup> Please contact Maine Dept. of Professional & Financial Regulations at : 35 State House Station, Augusta, ME 04333-0035.

<sup>59</sup> But ONLY in instances where Maryland law has been decoupled from federal law and an election has not been made to forego the federal change (i.e., bonus depreciation, IRC Sec 179, and special 5-year NOL provisions).

<sup>60</sup> Section 10-912 of the Tax-General Article, Annotated Code of Maryland (2004 Replacement Volume) provides for withholding of Maryland income tax on the amount of cash or other non like-kind replacement property received as part of the exchange. Tax is withheld at the rate of 6.00% for nonresident individuals and 7% for nonresident entities.

<sup>61</sup> The federal and state laws that provide for the disregarded entity provisions only apply to income taxes. For other purposes they are separate and distinct entities. Transactions between the LLC and its owner(s) and/or others do not receive any special sales and use tax treatment.

<sup>62</sup> Maryland law addresses single-member LLCs where the entity is disregarded for federal income tax purposes. Maryland has also adopted the federal "Check-the-box" regulations. Maryland has not had the opportunity to review the effect/application of Rev. Proc. 2002-69 to Maryland law.

<sup>63</sup> A nonresident individual or a nonresident entity MUST apply for an exemption from the income tax withholding. Maryland Form 506AE is used for this purpose. If a Certificate of Full or Partial Exemption (MW506E) is not issued by the Comptroller's office, then the applicable tax must be withheld at settlement in order for the deed to be recorded.

STATE	QUESTIONS													
	<b>Q1:</b> Does State impose rules/restrictions in addition to federal requirements on what qualifies as "like kind" replacement property in order to qualify for a tax deferral?	<b>Q2:</b> If taxpayer consummates tax deferred exchange of personal property when some of like-kind property is located outside of or is moved outside State does State impose tax treatment different from federal tax deferral treatment?	<b>Q3:</b> Does State require special reporting of an exchange on State tax form?	<b>Q4:</b> If taxpayer consummates partially tax deferred exchange in which non-like property is received, is gain reportable in your State computed with reference to depreciation/cost recovery rates allowed in State or is federal cost recovery/depreciation rates used to compute gain in exchange?	<b>Q5:</b> Does your jurisdiction impose a withholding tax, special estimated tax or similar tax on taxable portion of any exchange proceeds?	<b>Q6:</b> Are tax deferral laws applicable in your State for like-kind exchanges different for resident and non-resident taxpayers in any way?	<b>Q7:</b> Is single owner LLC that is disregarded for federal income tax purposes also disregarded for State income tax purposes?	<b>Q8:</b> Is single-owner LLC that is disregarded for federal income tax purposes also disregarded for purposes of State's sales taxes?	<b>Q9:</b> If State imposes real estate transfer tax, does State impose real estate transfer tax when qualified intermediary or taxpayer involved in exchange transfers ownership of limited liability company that holds record title to exchange property or is the real estate transfer tax only applied when record title to the exchange property is conveyed?	<b>Q10:</b> If State imposes sales or similar tax does State collect sales tax when qualified intermediary or taxpayer involved in exchange transfers ownership of membership interest in LLC that holds title to exchange property or is sales tax only applied when title to exchange property is transferred?	<b>Q11:</b> Does State impose special licensing, bonding or registration requirements on qualified intermediaries or exchange accommodation titleholders that provide exchange services in State?	<b>Q12:</b> Does State recognize special federal income tax treatment?	<b>Q13:</b> (a) Does your State recognize the federal income tax treatment of safe harbor parking arrangements? (b) Are there any unusual features?	
<b>Massachusetts*</b> <b>-no change/**</b> <b>no change</b>	Yes <sup>64</sup>	Yes <sup>65</sup>	No	State	No	Yes <sup>66</sup>	Yes	No <sup>67</sup>	Applied on change of record or registered title	N/A	No	No <sup>68</sup>	(a) Yes	(b)
<b>Michigan*/**</b>	No	No	No	Federal	No/2007 response- Yes <sup>69</sup>	No	Yes	No <sup>70</sup>	Applied on change of record or registered title	Applied on change of record or registered title	No	Yes	(a) Yes	(b)
<b>Minnesota*</b> <b>**</b>	No	No	No	Federal	No	No	Yes <sup>71</sup>	No <sup>72</sup>	<b>Applied on change of record or registered title</b>	<b>Applied on change of record or registered title</b>	N/R	<b>Yes/2007-MN not community property state</b>	(a) Yes	(b)

<sup>64</sup> Massachusetts does not tax a capital gain realized by a non-resident on foreign real estate.

<sup>65</sup> Yes, only if the taxpayer is a non-resident. Massachusetts does not tax a capital gain realized by a non-resident on foreign real estate.

<sup>66</sup> Massachusetts does not tax a capital gain realized by a non-resident on foreign real estate.

<sup>67</sup> Massachusetts law imposes a five percent sales tax on retail sales of tangible personal property by any vendor, unless otherwise exempt. G.L. c. 64H, s. 2. No specific exemption exists for sales by or to lic. G.L. c. 64H, s.6.

<sup>68</sup> N/A. Massachusetts is not a community property state.

<sup>69</sup> **2007 response: Individual income tax. If gain is recognized by a qualified flow through entity as defined under Michigan law (partnerships, S corporations, and unincorporated single member LLCs), withholding may be required on a non resident member's distributive share of the taxable gain.**

<sup>70</sup> In the case of a single member LLC who is disregarded as a separate entity for federal tax purposes, the LLC is still a legal entity and is required to register for sales tax if making retail sales in Michigan. See RAB 1999-9.

<sup>71</sup> See Department of Revenue Notice 98-08.

<sup>72</sup> **A single member LLC is treated as a separate person for Minnesota sales tax purposes. See Revenue Notice 2002-10.**

STATE	QUESTIONS													
	<b>Q1:</b> Does State impose rules/restrictions in addition to federal requirements on what qualifies as "like kind" replacement property in order to qualify for a tax deferral?	<b>Q2:</b> If taxpayer consummates tax deferred exchange of personal property when some of like-kind property is located outside of or is moved outside State does State impose tax treatment different from federal tax deferral treatment?	<b>Q3:</b> Does State require special reporting of an exchange on State tax form?	<b>Q4:</b> If taxpayer consummates partially tax deferred exchange in which non-like property is received, is gain reportable in your State computed with reference to depreciation/cost recovery rates allowed in State or is federal cost recovery/depreciation rates used to compute gain in exchange?	<b>Q5:</b> Does your jurisdiction impose a withholding tax, special estimated tax or similar tax on taxable portion of any exchange proceeds?	<b>Q6:</b> Are tax deferral laws applicable in your State for like-kind exchanges different for resident and non-resident taxpayers in any way?	<b>Q7:</b> Is single owner LLC that is disregarded for federal income tax purposes also disregarded for State income tax purposes?	<b>Q8:</b> Is single-owner LLC that is disregarded for federal income tax purposes also disregarded for purposes of State's sales taxes?	<b>Q9:</b> If State imposes real estate transfer tax, does State impose real estate transfer tax when qualified intermediary or taxpayer involved in exchange transfers ownership of limited liability company that holds record title to exchange property or is the real estate transfer tax only applied when record title to the exchange property is conveyed?	<b>Q10:</b> If State imposes sales or similar tax does State collect sales tax when qualified intermediary or taxpayer involved in exchange transfers ownership of membership interest in LLC that holds title to exchange property or is sales tax only applied when title to exchange property is transferred?	<b>Q11:</b> Does State impose special licensing, bonding or registration requirements on qualified intermediaries or exchange accommodation titleholders that provide exchange services in State?	<b>Q12:</b> Does State recognize special federal income tax treatment?	<b>Q13:</b> (a) Does your State recognize the federal income tax treatment of safe harbor parking arrangements? (b) Are there any unusual features?	
Mississippi	Yes <sup>73</sup>	Yes <sup>74</sup>	No	State	No	No	Yes	No	N/R	N/R	No	Yes	(a) Yes	(b)
Missouri- *no change **no change	No	No	No	Federal	No	No	Yes	Yes	<sup>75</sup>	<sup>76</sup>	No	Yes	(a) Yes	(b)
Montana*	No	No	2005-No 2006-Yes <sup>77</sup>	Federal	No	No	Yes <sup>78</sup>	No state sales tax	N/A	N/A	No	Yes	(a) Yes	(b) <sup>79</sup>

<sup>73</sup> The replacement property must be located in Mississippi in order to secure tax deferral.

<sup>74</sup> If in the exchange of personal property located in Mississippi for personal property of which some of it is located in another state the entire tax will not be deferred. The tax on that gain derived from the Mississippi property given up for that property located out of the state will not be deferred.

<sup>75</sup> Missouri has no real estate transfer tax.

<sup>76</sup> Missouri does not tax the transfer of a membership interest.

<sup>77</sup> A questionnaire with the tax returns asks if they have completed Form 8824 (among others). If they have, they must attach copy to state return.

<sup>78</sup> Single member LLC must file Montana Form DER-1.

<sup>79</sup> 2006 response: It may not be considered an "unusual feature" but the Dept. of Revenue will begin enforcing compliance with a portion of Montana's law defining "Montana source income" and its interaction with like-kind exchanges. Section 15-30-101(18)(a)(ii) defines the "gain attributable to the sale or other transfer of tangible property located in the state,..." as being Montana source income. The impact is that any gain realized on the sale or exchange of Montana property but not recognized under the provisions of section 1031 retains its classification as Montana source income even if the Montana property is exchanged for property in another state. The Montana definition does not create a taxable event at the time of the exchange. But it does require that, when the deferred gains are ultimately recognized for federal tax purposes, a non-Montana resident would be required to file a Montana state tax return and include the Montana portion of the gain in Montana source income. 2005 response: HB 799 introduced in the 59<sup>th</sup> legislative session (2005 legislative session) provided for current taxation or a lien to secure deferred payments of taxes when Montana real estate is exchanged for foreign property (non-Montana property). This bill was tabled in the House Taxation Committee. Montana is interested in the findings of this survey and the approach by other states in the treatment of 1031 like-kind exchanges.

STATE	QUESTIONS												
	<b>Q1:</b> Does State impose rules/restrictions in addition to federal requirements on what qualifies as "like kind" replacement property in order to qualify for a tax deferral?	<b>Q2:</b> If taxpayer consummates tax deferred exchange of personal property when some of like-kind property is located outside of or is moved outside State does State impose tax treatment different from federal tax deferral treatment?	<b>Q3:</b> Does State require special reporting of an exchange on State tax form?	<b>Q4:</b> If taxpayer consummates partially tax deferred exchange in which non-like property is received, is gain reportable in your State computed with reference to depreciation/cost recovery rates allowed in State or is federal cost recovery/depreciation rates used to compute gain in exchange?	<b>Q5:</b> Does your jurisdiction impose a withholding tax, special estimated tax or similar tax on taxable portion of any exchange proceeds?	<b>Q6:</b> Are tax deferral laws applicable in your State for like-kind exchanges different for resident and non-resident taxpayers in any way?	<b>Q7:</b> Is single owner LLC that is disregarded for federal income tax purposes also disregarded for State income tax purposes?	<b>Q8:</b> Is single-owner LLC that is disregarded for federal income tax purposes also disregarded for purposes of State's sales taxes?	<b>Q9:</b> If State imposes real estate transfer tax, does State impose real estate transfer tax when qualified intermediary or taxpayer involved in exchange transfers ownership of limited liability company that holds record title to exchange property or is the real estate transfer tax only applied when record title to the exchange property is conveyed?	<b>Q10:</b> If State imposes sales or similar tax does State collect sales tax when qualified intermediary or taxpayer involved in exchange transfers ownership of membership interest in LLC that holds title to exchange property or is sales tax only applied when title to exchange property is transferred?	<b>Q11:</b> Does State impose special licensing, bonding or registration requirements on qualified intermediaries or exchange accommodation titleholders that provide exchange services in State?	<b>Q12:</b> Does State recognize special federal income tax treatment?	<b>Q13:</b> (a) Does your State recognize the federal income tax treatment of safe harbor parking arrangements? (b) Are there any unusual features?
<b>Nebraska</b> *no change **no change	No	No	No	Federal	No	No	Yes	No <sup>80</sup>	<sup>81</sup>	Applied on change of record or registered title	No	Yes	(a) Yes (b)
<b>Nevada*</b>	<sup>82</sup>	See Q1	See Q1	See Q1	See Q1	See Q1	See Q1	No <sup>83</sup>	<sup>84</sup>	<sup>85</sup>	2005-Yes <sup>86</sup> 2006-No	2005-No <sup>87</sup> 2006-Yes	(a) See Q1 (b)
<b>New Hampshire*</b>	No but will follow IRC as of 12/31/00	No	No	State but NH uses IRC as of 12/31/00 <sup>88</sup>	No	No	No- <sup>89</sup>	No-NH has no general sales tax <sup>90</sup>	Applied on change of ownership of LLC <sup>91</sup>	No sales tax	No <sup>92</sup>	No-see answer to Q7	(a) Yes (b)

<sup>80</sup> The LLC is treated as an entity separate from its owner for sales tax purposes.

<sup>81</sup> Nebraska imposes a documentary stamp tax on real estate transfers. The application of such a tax is based on the specific facts of each transfer. For additional information see NE Rev. Stat. §76-901 through 76-908.

<sup>82</sup> There is no State income tax in Nevada.

<sup>83</sup> **2006 response: But is disregarded for purposes of state business license. Whether LLC is disregarded or not has no sales tax consequences under Nevada law.** 2005 response: Tangible personal property is taxable for sales and use taxes, no matter!

<sup>84</sup> **2006 response: Tax applied only on change of record of registered title.** 2005 response: Transfer tax is imposed on one leg of the two-legged process, usually the first leg when transferring to Q1.

<sup>85</sup> **2006 response: Tax applied only on change of record of registered title.** 2005 response: No sales tax in exchange.

<sup>86</sup> Business license for any person, corporation, LLC, etc. doing business in the State (\$100 renewal fee). Modified Business Tax General Business (.65%); modified Business Tax Financial Institution (2%). Surcharge on gross wages reported for unemployment insurance less deduction for health care paid by employer for employee.

<sup>87</sup> **2006 response: For business license, the LLC would be disregarded under these circumstances.** 2005 response: Recognized only for business license. No State income tax in Nevada.

<sup>88</sup> **2007 response: To the extent that Sec. 179 allowances exceed the \$20K IRC limit at that date, they are disallowed for NH BPT purposes. Similarly, NH doesn't allow bonus depreciation on the Domestic Production Activities Deduction, both of which become law after 12/31/00. If any of the above affects the amount of gain in a LKE, it must be adjusted for NH BPT purposes.**

STATE	QUESTIONS													
	<b>Q1:</b> Does State impose rules/restrictions in addition to federal requirements on what qualifies as "like kind" replacement property in order to qualify for a tax deferral?	<b>Q2:</b> If taxpayer consummates tax deferred exchange of personal property when some of like-kind property is located outside of or is moved outside State does State impose tax treatment different from federal tax deferral treatment?	<b>Q3:</b> Does State require special reporting of an exchange on State tax form?	<b>Q4:</b> If taxpayer consummates partially tax deferred exchange in which non-like property is received, is gain reportable in your State computed with reference to depreciation/cost recovery rates allowed in State or is federal cost recovery/depreciation rates used to compute gain in exchange?	<b>Q5:</b> Does your jurisdiction impose a withholding tax, special estimated tax or similar tax on taxable portion of any exchange proceeds?	<b>Q6:</b> Are tax deferral laws applicable in your State for like-kind exchanges different for resident and non-resident taxpayers in any way?	<b>Q7:</b> Is single owner LLC that is disregarded for federal income tax purposes also disregarded for State income tax purposes?	<b>Q8:</b> Is single-owner LLC that is disregarded for federal income tax purposes also disregarded for purposes of State's sales taxes?	<b>Q9:</b> If State imposes real estate transfer tax, does State impose real estate transfer tax when qualified intermediary or taxpayer involved in exchange transfers ownership of limited liability company that holds record title to exchange property or is the real estate transfer tax only applied when record title to the exchange property is conveyed?	<b>Q10:</b> If State imposes sales or similar tax does State collect sales tax when qualified intermediary or taxpayer involved in exchange transfers ownership of membership interest in LLC that holds title to exchange property or is sales tax only applied when title to exchange property is transferred?	<b>Q11:</b> Does State impose special licensing, bonding or registration requirements on qualified intermediaries or exchange accommodation titleholders that provide exchange services in State?	<b>Q12:</b> Does State recognize special federal income tax treatment?	<b>Q13:</b> (a) Does your State recognize the federal income tax treatment of safe harbor parking arrangements? (b) Are there any unusual features?	
New Jersey*	No	No	No	State	2005-No 2006- Yes <sup>93</sup>	No	Yes	N/R	Applied on change of record or registered title	N/R	No	Yes	(a) N/R	(b) N/R
New Mexico*	No	No	No	Federal	No	No	Yes	2005-No <sup>94</sup> 2006-Yes	N/R	<sup>95</sup>	No	2005-No 2006-Yes	(a) 2005-Yes 2006-No <sup>96</sup>	(b)
New York**	No	No	No	State/2007 Federal	No <sup>97</sup>	No <sup>98</sup>	Yes	No <sup>99</sup>	<sup>100</sup>	<sup>101</sup>	No	No <sup>102</sup>	(a) Yes <sup>103</sup>	(b)

<sup>89</sup> NH requires separate entity reporting. SMLLC must request a "Dept. ID number" on Form DP-200 and file a business tax return under that number. 2007 response: NH BPT applied at the entity level. SMLLC exceeding BPT filing threshold (of \$50 gross receipts) must file.

<sup>90</sup> 2007 response: N/A—NH has no general sales tax but it has a meals and rentals tax.

<sup>91</sup> 2007 response: But only if the LLC is a "real estate holding company", i.e., it is engaged principally in the business of owning, holding, selling or leasing real estate.

<sup>92</sup> None that we know of, but the DRA would not be responsible for such laws, if they existed here. 2007 response: None required under taxation statutes.

<sup>93</sup> If taxpayer receives taxable income, estimated NJ income tax is required under N.J.S.A. 54A.8-4.

<sup>94</sup> 2005 response: Gross receipts tax at entity level.

<sup>95</sup> 2006 response: Tax applied only on change of record or registered title. 2005 response: No gross receipts tax on real estate sales.

<sup>96</sup> No position taken.

<sup>97</sup> 2007 response: Generally, non-residents have to make estimated payments but when there is an Internal Revenue Code section 1031 exchange where no gain or loss is recognized, the non-resident taxpayer is required to check a box on Form IT-2663-1 and state that the transaction is a 1031 exchange.

<sup>98</sup> Generally, non-residents have to make estimated payments but when there is an Internal Revenue Code section 1031 exchange where no gain or loss is recognized, the non-resident taxpayer is required to check a box on Form IT-2663-1 and state that the transaction is a 1031 exchange.

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<sup>99</sup> An LLC is a person as defined in section 1101(a) of the Tax Law. As a separate person, it may have obligations to pay sales and compensating use taxes. There are certain transactions relating to a LLC that may be excluded from tax under section 1101(b)(4) of the Tax Law.

<sup>100</sup> Neither is correct under New York State law. Tax is applied when there is a beneficial change in ownership.

<sup>101</sup> As an exchange of like-kind property, the mutual trade of tangible personal property would be a barter which is included in the definition of sale in Tax Law section 1101(b)(5). As such, each transfer would be subject to sales tax, regardless of the form of the ownership (individual or LLC). Section 1101(b)(5) of the Tax Law defines sale as the transfer of title or possession, or both, for a consideration. Thus, sales tax would apply regardless of whether title or possession is transferred as long as there is consideration.

<sup>102</sup> New York is not a community property state.

<sup>103</sup> The correct cite is Rev. Proc. 2000-37, 2000-2 CB 308, which has been modified by Rev. Proc. 2004-31.

STATE	QUESTIONS													
	<b>Q1:</b> Does State impose rules/restrictions in addition to federal requirements on what qualifies as "like kind" replacement property in order to qualify for a tax deferral?	<b>Q2:</b> If taxpayer consummates tax deferred exchange of personal property when some of like-kind property is located outside of or is moved outside State does State impose tax treatment different from federal tax deferral treatment?	<b>Q3:</b> Does State require special reporting of an exchange on State tax form?	<b>Q4:</b> If taxpayer consummates partially tax deferred exchange in which non-like property is received, is gain reportable in your State computed with reference to depreciation/cost recovery rates allowed in State or is federal cost recovery/depreciation rates used to compute gain in exchange?	<b>Q5:</b> Does your jurisdiction impose a withholding tax, special estimated tax or similar tax on taxable portion of any exchange proceeds?	<b>Q6:</b> Are tax deferral laws applicable in your State for like-kind exchanges different for resident and non-resident taxpayers in any way?	<b>Q7:</b> Is single owner LLC that is disregarded for federal income tax purposes also disregarded for State income tax purposes?	<b>Q8:</b> Is single-owner LLC that is disregarded for federal income tax purposes also disregarded for purposes of State's sales taxes?	<b>Q9:</b> If State imposes real estate transfer tax, does State impose real estate transfer tax when qualified intermediary or taxpayer involved in exchange transfers ownership of limited liability company that holds record title to exchange property or is the real estate transfer tax only applied when record title to the exchange property is conveyed?	<b>Q10:</b> If State imposes sales or similar tax does State collect sales tax when qualified intermediary or taxpayer involved in exchange transfers ownership of membership interest in LLC that holds title to exchange property or is sales tax only applied when title to exchange property is transferred?	<b>Q11:</b> Does State impose special licensing, bonding or registration requirements on qualified intermediaries or exchange accommodation titleholders that provide exchange services in State?	<b>Q12:</b> Does State recognize special federal income tax treatment?	<b>Q13:</b> (a) Does your State recognize the federal income tax treatment of safe harbor parking arrangements? (b) Are there any unusual features?	
North Carolina*-	No <sup>104</sup>	No	No	Federal	No	No <sup>105</sup>	Yes	No <sup>106</sup>	Applied on change of record or registered title	Applied on change of record or registered title	No	Yes	(a) Yes	(b)
North Dakota*	No	No	No	Federal	No	No	Yes	No <sup>107</sup>	N/A	<sup>108</sup>	<sup>109</sup>	2005-N/A 2006-Yes	(a) Yes	(b)
Ohio	No	No	No	Federal	No	No	Yes	No	Applied on change of record or registered title	Applied on change of record or registered title	<sup>110</sup>	Yes	(a) Yes	(b)

<sup>104</sup> 2006 response: Federal taxable income is the starting point for determining NC taxable income and there are no State adjustments required with respect to 1031 like-kind exchanges.

<sup>105</sup> The gain from the sale of replacement property is reportable on the federal return. However, the gain is reportable to NC only if the replacement property is located in NC.

<sup>106</sup> If there are NC sales, there is a sales tax liability regardless of the type of entity. 2006 response: The limited liability company is not disregarded for sales tax purposes; in other words, the LLC is looked to satisfy any sales tax obligations it may have.

<sup>107</sup> For sales tax purposes, the LLC must register for a sales tax permit.

<sup>108</sup> Assuming the property involved is subject to sales tax, the sales tax applies when title to the property is transferred. The transfer of an ownership interest in an LLC (holding title to property that is subject to an exchange) does not subject the property subject to exchange to sales tax.

<sup>109</sup> This is not within our purview. Contact the ND Real Estate Commission. 2006 response: Our office does not do so; however, we do not know if another state agency does. We suggest you contact the North Dakota Real Estate Commission—Phone: 701-328-9749—email: pjergenson@state.nd.us.

<sup>110</sup> For information please contact the Ohio Division of Real Estate and Professional Licensing, Ohio Dept. of Commerce, 614-466-4100.

STATE	QUESTIONS													
	<b>Q1:</b> Does State impose rules/restrictions in addition to federal requirements on what qualifies as "like kind" replacement property in order to qualify for a tax deferral?	<b>Q2:</b> If taxpayer consummates tax deferred exchange of personal property when some of like-kind property is located outside of or is moved outside State does State impose tax treatment different from federal tax deferral treatment?	<b>Q3:</b> Does State require special reporting of an exchange on State tax form?	<b>Q4:</b> If taxpayer consummates partially tax deferred exchange in which non-like property is received, is gain reportable in your State computed with reference to depreciation/cost recovery rates allowed in State or is federal cost recovery/depreciation rates used to compute gain in exchange?	<b>Q5:</b> Does your jurisdiction impose a withholding tax, special estimated tax or similar tax on taxable portion of any exchange proceeds?	<b>Q6:</b> Are tax deferral laws applicable in your State for like-kind exchanges different for resident and non-resident taxpayers in any way?	<b>Q7:</b> Is single owner LLC that is disregarded for federal income tax purposes also disregarded for State income tax purposes?	<b>Q8:</b> Is single-owner LLC that is disregarded for federal income tax purposes also disregarded for purposes of State's sales taxes?	<b>Q9:</b> If State imposes real estate transfer tax, does State impose real estate transfer tax when qualified intermediary or taxpayer involved in exchange transfers ownership of limited liability company that holds record title to exchange property or is the real estate transfer tax only applied when record title to the exchange property is conveyed?	<b>Q10:</b> If State imposes sales or similar tax does State collect sales tax when qualified intermediary or taxpayer involved in exchange transfers ownership of membership interest in LLC that holds title to exchange property or is sales tax only applied when title to exchange property is transferred?	<b>Q11:</b> Does State impose special licensing, bonding or registration requirements on qualified intermediaries or exchange accommodation titleholders that provide exchange services in State?	<b>Q12:</b> Does State recognize special federal income tax treatment?	<b>Q13:</b> (a) Does your State recognize the federal income tax treatment of safe harbor parking arrangements? (b) Are there any unusual features?	
<b>Oklahoma**</b>	No	No	No	Federal	No	No	Yes	No <sup>111</sup>	N/R/2007-applied on change of record or registered title	Applied on change of record or registered title	No	Yes	(a) Yes	(b)
<b>Oregon*/**no change</b>	Yes <sup>112</sup>	Yes <sup>113</sup>	Yes <sup>114</sup>	Federal	No	No	Yes <sup>115</sup>	Yes <sup>116</sup>	Tax applied only on change of record or registered title to exchange property or on change of ownership of LLC ("look through treatment")	Tax applied only on change of record or registered title to exchange property or on change of ownership of LLC ("look through treatment")	<sup>117</sup>	No <sup>118</sup>	(a) Yes	(b)

<sup>111</sup> 2007-If a disregarded entity is required to collect sales tax, they must do so regardless of their entity status. Each transfer between separate legal entities is taxable OAC 710:65-13-201.

<sup>112</sup> Oregon maintains jurisdiction to tax out-of-state replacement property when the replacement property is subsequently disposed of by the taxpayer.

<sup>113</sup> Same as Q1.

<sup>114</sup> Oregon requires that taxpayers file Oregon Form 24, Oregon Like-Kind Exchanges/Involuntary Conversions, with their Oregon return in the year of the exchange or conversion.

<sup>115</sup> Oregon Revised Statute 63.810 states in part that "For purposes of ORS Chapters 305 to 325, a limited liability company formed under this chapter ... shall be classified in the same manner as it is classified for federal income tax purposes."

<sup>116</sup> Oregon does not have a sales tax.

<sup>117</sup> This is not a question for the Oregon Department of Revenue.

<sup>118</sup> Oregon is not a community property state. Two-owner LLCs formed in Oregon will not be disregarded for Oregon tax purposes. If two-owner LLC was formed in a community property state and was disregarded for both federal and the other state's tax purposes and the LLC later moved into Oregon, Oregon would recognize the special tax treatment.



STATE	QUESTIONS												
	<b>Q1:</b> Does State impose rules /restrictions in addition to federal requirements on what qualifies as "like kind" replacement property in order to qualify for a tax deferral?	<b>Q2:</b> If taxpayer consummates tax deferred exchange of personal property when some of like-kind property is located outside of or is moved outside State does State impose tax treatment different from federal tax deferral treatment?	<b>Q3:</b> Does State require special reporting of an exchange on State tax form?	<b>Q4:</b> If taxpayer consummates partially tax deferred exchange in which non-like property is received, is gain reportable in your State computed with reference to depreciation/cost recovery rates allowed in State or is federal cost recovery/depreciation rates used to compute gain in exchange?	<b>Q5:</b> Does your jurisdiction impose a withholding tax, special estimated tax or similar tax on taxable portion of any exchange proceeds?	<b>Q6:</b> Are tax deferral laws applicable in your State for like-kind exchanges different for resident and non-resident taxpayers in any way?	<b>Q7:</b> Is single owner LLC that is disregarded for federal income tax purposes also disregarded for State income tax purposes?	<b>Q8:</b> Is single-owner LLC that is disregarded for federal income tax purposes also disregarded for purposes of State's sales taxes?	<b>Q9:</b> If State imposes real estate transfer tax, does State impose real estate transfer tax when qualified intermediary or taxpayer involved in exchange transfers ownership of limited liability company that holds record title to exchange property or is the real estate transfer tax only applied when record title to the exchange property is conveyed?	<b>Q10:</b> If State imposes sales or similar tax does State collect sales tax when qualified intermediary or taxpayer involved in exchange transfers ownership of membership interest in LLC that holds title to exchange property or is sales tax only applied when title to exchange property is transferred?	<b>Q11:</b> Does State impose special licensing, bonding or registration requirements on qualified intermediaries or exchange accommodation titleholders that provide exchange services in State?	<b>Q12:</b> Does State recognize special federal income tax treatment?	<b>Q13:</b> (a) Does your State recognize the federal income tax treatment of safe harbor parking arrangements? (b) Are there any unusual features?
Pennsylvania*/**	Yes <sup>119</sup>	Yes <sup>120</sup>	No	State—2007-see response to Q1 <sup>121</sup>	Yes <sup>122</sup>	No/2007-except as noted in Q5	Yes <sup>123</sup>	No <sup>124</sup>	Applied on change of ownership of LLC <sup>125</sup>	Applied on change of record or registered title & change of ownership of LLC/2007 see enclosure sent w/response	Yes <sup>126</sup>	No <sup>127</sup>	(a) No <sup>128</sup> 2007 see Q1 & encl. (b) No 2007 see enclosure

<sup>119</sup> PA does not recognize the deferral of gain on IRC §1031 exchanger for personal income tax purposes. However, PA will permit the deferral of gain in a like-kind exchange if permitted by the taxpayers method of accounting. See Private letter rulings PIT-99-102 and PIT-01-062. This is a rare exception. **2007 response: The PA Personal Income Tax has no provisions comparable to IRC 1031. Gain or loss is recognized unless the taxpayer consistently computes his personal income under GAAP and the exchange is reported for both financial accounting purposes and tax purposes in a manner consistent with APB #29 (includes 10/2006 tax bulletin "Pennsylvania Tax Treatment of IRC §1031 Like-Kind Exchanges" issued by Department)**

<sup>120</sup> See response to Q1.

<sup>121</sup> **2007-The PA Personal Income Tax does not have depreciation recapture provisions. If a taxpayer uses accelerated depreciation, basis is reduced each year for the greater of straight-line depreciation for financial accounting purposes or the tax benefit afforded by using accelerated depreciation. Federal recovery rates in effect when the item is placed in service or on January 1, 1997, whichever is later, are used.**

<sup>122</sup> PA estimated tax payment rules are applicable to all taxable income that is not subject to employer withholding. **2007-PA imposes a withholding tax on the income sourceable to PA of partners and PA S corporation shareholders who are nonresidents. It is applicable, but not limited to, gains on Federally partially tax deferred exchanges.**

<sup>123</sup> **2007-Single member unincorporated entities are disregarded for personal income tax purposes. They are not, however, disregarded for realty transfer tax purposes.**

<sup>124</sup> If the LLC is a licensed vendor, it must collect and remit sales tax; treated as separate legal entity.

<sup>125</sup> **2007 – Generally, transfers to and from QIs and EATs are subject to realty transfer tax. Moreover, generally, transfers of interests in LLCs that hold record title also are subject to realty transfer tax.**

<sup>126</sup> **2005 Response: The Department of Revenue is not the appropriate agency to respond to this question. 2006 Response: For sales tax purposes QIs or EATs may have an obligation to register for sales tax license and to charge and collect PA sales tax. There may be other licensing, bonding or registration requirements outside the purview of the Dept. Of Revenue. 2007 Response: The Dept. of Revenue has no special licensing or**

Rhode Island*-no change/**	No/2007-Yes <sup>129</sup>	No	No	State	Yes <sup>130</sup> /2007-No	No	Yes	Yes	Applied on change of record or registered title	Applied on change of record or registered title	No	Yes	(a) Yes	(b)
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registration requirements for personal income tax purposes. For sales tax purposes, QIs and EATs may have an obligation to register. There may be other licensing, bonding or registration requirements outside the purview of the Department of Revenue.

<sup>127</sup> 2007-For almost all personal income tax purposes, a husband and wife are not treated as one person. However, the Dept. of Revenue has not ruled on the issue of whether a husband and wife who hold their interests in an LLC as community property constitute one or two owners.

<sup>128</sup> See response to Q1. Documents that convey title to real estate to or from a parking entity are potentially subject to PA realty transfer or sales tax. The parking entity is not necessarily recognized as an agent.

<sup>129</sup> 2007: Rhode Island does not recognize like kind exchanges. However, if the replacement property is located outside of RI, the deferred gain is RI source income upon sale of the replacement property.

<sup>130</sup> Rhode Island requires back-up withholding on the taxable gain on the sale of real estate by non-residents. 2007: Response has been changed to No although original answer was Yes.

STATE	QUESTIONS													
	<b>Q1:</b> Does State impose rules/restrictions in addition to federal requirements on what qualifies as "like kind" replacement property in order to qualify for a tax deferral?	<b>Q2:</b> If taxpayer consummates tax deferred exchange of personal property when some of like-kind property is located outside of or is moved outside State does State impose tax treatment different from federal tax deferral treatment?	<b>Q3:</b> Does State require special reporting of an exchange on State tax form?	<b>Q4:</b> If taxpayer consummates partially tax deferred exchange in which non-like property is received, is gain reportable in your State computed with reference to depreciation/cost recovery rates allowed in State or is federal cost recovery/depreciation rates used to compute gain in exchange?	<b>Q5:</b> Does your jurisdiction impose a withholding tax, special estimated tax or similar tax on taxable portion of any exchange proceeds?	<b>Q6:</b> Are tax deferral laws applicable in your State for like-kind exchanges different for resident and non-resident taxpayers in any way?	<b>Q7:</b> Is single owner LLC that is disregarded for federal income tax purposes also disregarded for State income tax purposes?	<b>Q8:</b> Is single-owner LLC that is disregarded for federal income tax purposes also disregarded for purposes of State's sales taxes?	<b>Q9:</b> If State imposes real estate transfer tax, does State impose real estate transfer tax when qualified intermediary or taxpayer involved in exchange transfers ownership of limited liability company that holds record title to exchange property or is the real estate transfer tax only applied when record title to the exchange property is conveyed?	<b>Q10:</b> If State imposes sales or similar tax does State collect sales tax when qualified intermediary or taxpayer involved in exchange transfers ownership of membership interest in LLC that holds title to exchange property or is sales tax only applied when title to exchange property is transferred?	<b>Q11:</b> Does State impose special licensing, bonding or registration requirements on qualified intermediaries or exchange accommodation titleholders that provide exchange services in State?	<b>Q12:</b> Does State recognize special federal income tax treatment?	<b>Q13:</b> (a) Does your State recognize the federal income tax treatment of safe harbor parking arrangements? (b) Are there any unusual features?	
<b>South Carolina*-no change</b>	No	No	Yes <sup>131</sup>	State	Yes <sup>132</sup>	No	Yes	Yes	Applied on change of record or registered title <sup>133</sup>	On change of record or registered title if seller engaged in selling tangible personal property at retail <sup>134</sup>	No	Yes – not community property state	(a) Yes	(b) <sup>135</sup>
<b>South Dakota* **-no change</b>	<sup>136</sup> N/R	N/R	N/R	N/R	N/R	N/R	No	Applied on change of record or registered title to exchange property	Same answer as Q9	N/R	N/R	N/R	(a) N/R	(b) N/R

<sup>131</sup> Exchanges involving the transfer of real estate by non-resident sellers may require the buyer to withhold taxes, which would be reported on Form I-290. See SC Revenue Advisory Bulletin #02-6, Question 22 for details.

<sup>132</sup> See answer to Question 3.

<sup>133</sup> Applied on change of ownership of LLC if single-member LLC and instrument recorded.

<sup>134</sup> On change of ownership of LLC if single-member LLC.

<sup>135</sup> **2006 Response:** See Rev. Rul. 99-2 re deed recording fees and like-kind exchanges. Also see SC Private Rev. Op. No. 2002-2 (2002 WL 31371230) re like-kind exchanges and automobile leases. 2005 Response: See SC Rev. Rul. 99-7 re: deed recording fees and like-kind exchanges (See also answer to Q3.)

<sup>136</sup> The State of South Dakota does not have an income tax.

STATE	QUESTIONS													
	<b>Q1:</b> Does State impose rules/restrictions in addition to federal requirements on what qualifies as "like kind" replacement property in order to qualify for a tax deferral?	<b>Q2:</b> If taxpayer consummates tax deferred exchange of personal property when some of like-kind property is located outside of or is moved outside State does State impose tax treatment different from federal tax deferral treatment?	<b>Q3:</b> Does State require special reporting of an exchange on State tax form?	<b>Q4:</b> If taxpayer consummates partially tax deferred exchange in which non-like property is received, is gain reportable in your State computed with reference to depreciation/cost recovery rates allowed in State or is federal cost recovery/depreciation rates used to compute gain in exchange?	<b>Q5:</b> Does your jurisdiction impose a withholding tax, special estimated tax or similar tax on taxable portion of any exchange proceeds?	<b>Q6:</b> Are tax deferral laws applicable in your State for like-kind exchanges different for resident and non-resident taxpayers in any way?	<b>Q7:</b> Is single owner LLC that is disregarded for federal income tax purposes also disregarded for State income tax purposes?	<b>Q8:</b> Is single-owner LLC that is disregarded for federal income tax purposes also disregarded for purposes of State's sales taxes?	<b>Q9:</b> If State imposes real estate transfer tax, does State impose real estate transfer tax when qualified intermediary or taxpayer involved in exchange transfers ownership of limited liability company that holds record title to exchange property or is the real estate transfer tax only applied when record title to the exchange property is conveyed?	<b>Q10:</b> If State imposes sales or similar tax does State collect sales tax when qualified intermediary or taxpayer involved in exchange transfers ownership of membership interest in LLC that holds title to exchange property or is sales tax only applied when title to exchange property is transferred?	<b>Q11:</b> Does State impose special licensing, bonding or registration requirements on qualified intermediaries or exchange accommodation titleholders that provide exchange services in State?	<b>Q12:</b> Does State recognize special federal income tax treatment?	<b>Q13:</b> (a) Does your State recognize the federal income tax treatment of safe harbor parking arrangements? (b) Are there any unusual features?	
<b>Tennessee</b> *no change **no change	No	No	No	Federal <sup>137</sup>	No	No	No <sup>138</sup>	No <sup>139</sup>	Applied on change of record or registered title	Applied on change of record or registered title	Yes <sup>140</sup>	No <sup>141</sup>	(a) Yes	(b)
<b>Texas</b>	No	No	No	Federal <sup>142</sup>	No	No	No <sup>143</sup>	No <sup>144</sup>	N/R	Applied on change of record or registered title	No	No	(a) N/A	(b)
<b>Utah</b> *no change/**	No/2007-Yes <sup>145</sup>	No	No	Federal	No	No	Yes	No <sup>146</sup>	N/R	Applied on change of record or registered title	No	Yes	(a) Yes	(b)

<sup>137</sup> Federal depreciation rates are computed under IRC Section 168 as it existed immediately prior to passage of Title 1, Section 101 of Job Credit and Worker Assistance Act of 2002.

<sup>138</sup> Tennessee is generally a separate entity State. If doing business in Tennessee, an LLC that is disregarded for federal purposes files its own separate entity franchise excise tax return. There is one exception – an LLC whose single member is a corporation is disregarded for tax franchise excise tax purposes and is included in the return filed by its single member corporate parent.

<sup>139</sup> Each business entity files a Tennessee sales tax return for each of its Tennessee locations. A single-owner LLC would file a return for each of its own Tennessee locations regardless of whether it is disregarded for federal purposes.

<sup>140</sup> If the intermediary has physical presence in Tennessee, it must register with Tennessee Department of Revenue for tax purposes. If intermediary has limited liability, such as an LLC, corporation or limited partnership, it may have to register with Tennessee Secretary of State and obtain a certificate of authority or its equivalent to do business in Tennessee.

<sup>141</sup> The LLC will not be disregarded in Tennessee. It will have to file its own separate entity franchise, excise tax return. Tennessee has no general income tax applicable to individuals. Individuals are subject to an income tax on dividend and interest income.

<sup>142</sup> If the taxpayer is a corporation or LLC, then the taxpayer will use those Federal rates applicable for the Internal Revenue Code in effect from January 1, 1996 through December 31, 1996 for depreciation and cost recovery.

<sup>143</sup> A limited liability company is subject to Texas franchise tax, even if it is a disregarded entity for federal tax purposes.

<sup>144</sup> A limited liability company is subject to Texas sales and use tax, even if it is a disregarded entity for federal tax purposes.

<sup>145</sup> **2007: Utah maintains jurisdiction to tax out-of-state replacement property when the replacement property is subsequently disposed of by a taxpayer.**

<sup>146</sup> Still is an entity subject to sales tax laws. **2007: If LLC sells to related companies the sales are taxable unless specifically exempted by the sales tax statutes.**

STATE	QUESTIONS												
	<b>Q1:</b> Does State impose rules/restrictions in addition to federal requirements on what qualifies as "like kind" replacement property in order to qualify for a tax deferral?	<b>Q2:</b> If taxpayer consummates tax deferred exchange of personal property when some of like-kind property is located outside of or is moved outside State does State impose tax treatment different from federal tax deferral treatment?	<b>Q3:</b> Does State require special reporting of an exchange on State tax form?	<b>Q4:</b> If taxpayer consummates partially tax deferred exchange in which non-like property is received, is gain reportable in your State computed with reference to depreciation/cost recovery rates allowed in State or is federal cost recovery/depreciation rates used to compute gain in exchange?	<b>Q5:</b> Does your jurisdiction impose a withholding tax, special estimated tax or similar tax on taxable portion of any exchange proceeds?	<b>Q6:</b> Are tax deferral laws applicable in your State for like-kind exchanges different for resident and non-resident taxpayers in any way?	<b>Q7:</b> Is single owner LLC that is disregarded for federal income tax purposes also disregarded for State income tax purposes?	<b>Q8:</b> Is single-owner LLC that is disregarded for federal income tax purposes also disregarded for purposes of State's sales taxes?	<b>Q9:</b> If State imposes real estate transfer tax, does State impose real estate transfer tax when qualified intermediary or taxpayer involved in exchange transfers ownership of limited liability company that holds record title to exchange property or is the real estate transfer tax only applied when record title to the exchange property is conveyed?	<b>Q10:</b> If State imposes sales or similar tax does State collect sales tax when qualified intermediary or taxpayer involved in exchange transfers ownership of membership interest in LLC that holds title to exchange property or is sales tax only applied when title to exchange property is transferred?	<b>Q11:</b> Does State impose special licensing, bonding or registration requirements on qualified intermediaries or exchange accommodation titleholders that provide exchange services in State?	<b>Q12:</b> Does State recognize special federal income tax treatment?	<b>Q13:</b> (a) Does your State recognize the federal income tax treatment of safe harbor parking arrangements? (b) Are there any unusual features?
Vermont	Yes <sup>147</sup>	N/R	Yes <sup>148</sup>	Federal	Yes <sup>149</sup>	No	No <sup>150</sup>	No <sup>151</sup>	Applied on change of record or registered title	Applied on change of record or registered title	N/R	No <sup>152</sup>	(a) Yes (b)
Virginia*	No	No	No	Federal <sup>153</sup>	No	No	Yes	No <sup>154</sup>	Applied on change of record or registered title	Applied on change of record or registered title	2005-No 2006-Yes <sup>155</sup>	Yes	(a) Yes (b) N/A

<sup>147</sup> Must be property within the State.

<sup>148</sup> Lain gain return.

<sup>149</sup> Real estate withholding and land gain withholding.

<sup>150</sup> Must transfer to LLC at time of formation of LLC.

<sup>151</sup> Question is unclear. There are, however, no special treatments for LLCs with regard to sales taxes.

<sup>152</sup> Not for purposes of the transfer tax.

<sup>153</sup> **2006 response: Under VA Code §58.1-301, VA does not allow the special depreciation allowance for certain property provided for under §168(k) of the Internal Revenue Code.** 2005 response: Please note that recent changes in the Internal Revenue Code may not apply until the Virginia General Assembly advances the date of conformity.

<sup>154</sup> In Public Document ("P.D.") 98-157, the Department determined that for retail sales and use tax purposes, a single member LLC is considered a separate legal entity subject to the applicable Virginia sales and use tax laws, regardless of which "check the box" elections the entity chooses for federal income tax purposes. Virginia sales and use tax law, unlike Virginia income tax law, is not tied to federal income tax law by the concept of conformity and has a specific definition of "dealer" for the purposes of the retail sales and use tax.

<sup>155</sup> Upon the sale of Virginia real estate held by an out-of-state titleholder, the closing agent must obtain a registration form or certification that the transaction is not subject to Virginia income tax. See VA. Code § 58.1-317.

STATE	QUESTIONS													
	<b>Q1:</b> Does State impose rules/restrictions in addition to federal requirements on what qualifies as "like kind" replacement property in order to qualify for a tax deferral?	<b>Q2:</b> If taxpayer consummates tax deferred exchange of personal property when some of like-kind property is located outside of or is moved outside State does State impose tax treatment different from federal tax deferral treatment?	<b>Q3:</b> Does State require special reporting of an exchange on State tax form?	<b>Q4:</b> If taxpayer consummates partially tax deferred exchange in which non-like property is received, is gain reportable in your State computed with reference to depreciation/cost recovery rates allowed in State or is federal cost recovery/depreciation rates used to compute gain in exchange?	<b>Q5:</b> Does your jurisdiction impose a withholding tax, special estimated tax or similar tax on taxable portion of any exchange proceeds?	<b>Q6:</b> Are tax deferral laws applicable in your State for like-kind exchanges different for resident and non-resident taxpayers in any way?	<b>Q7:</b> Is single owner LLC that is disregarded for federal income tax purposes also disregarded for State income tax purposes?	<b>Q8:</b> Is single-owner LLC that is disregarded for federal income tax purposes also disregarded for purposes of State's sales taxes?	<b>Q9:</b> If State imposes real estate transfer tax, does State impose real estate transfer tax when qualified intermediary or taxpayer involved in exchange transfers ownership of limited liability company that holds record title to exchange property or is the real estate transfer tax only applied when record title to the exchange property is conveyed?	<b>Q10:</b> If State imposes sales or similar tax does State collect sales tax when qualified intermediary or taxpayer involved in exchange transfers ownership of membership interest in LLC that holds title to exchange property or is sales tax only applied when title to exchange property is transferred?	<b>Q11:</b> Does State impose special licensing, bonding or registration requirements on qualified intermediaries or exchange accommodation titleholders that provide exchange services in State?	<b>Q12:</b> Does State recognize special federal income tax treatment?	<b>Q13:</b> (a) Does your State recognize the federal income tax treatment of safe harbor parking arrangements? (b) Are there any unusual features?	
<b>Washington *-no change/**</b>	N/A/2007 <sup>156</sup>	N/A/2007-no income tax	N/A/2007-no income tax	N/A/2007-no income tax	N/A/2007/no income tax	N/A/2007-no income tax	N/A/2007-no income tax	No <sup>157</sup>	<sup>158</sup>	<sup>159</sup>	<sup>160</sup>	No <sup>161</sup>	(a) <sup>162</sup>	(b)
<b>West Virginia<sup>163</sup></b>	No	No	No	Federal	No	No	Yes	Yes	Applied on change of record or registered title	Applied on change of record or registered title	No	Yes	(a) Yes	(b)
<b>Wisconsin** no change</b>	No	No	No	State	No	No	Yes	No <sup>164</sup>	Applied on change of record or registered title	Applied on change of ownership	No	Yes	(a) Yes	(b)

<sup>156</sup> 2007 response: Washington does not impose a personal or corporate net income tax.

<sup>157</sup> 2007 response: All vendors who sell taxable goods/services at retail must collect the sales tax. Each separately organized entity is treated separately for tax purposes. Washington law makes no provision for filing consolidated returns or for the elimination of inter-company transactions from the measure of tax.

<sup>158</sup> The real estate excise tax applies on the transfer of a controlling ownership interest (50% or more) of a limited liability company that owns real estate located in Washington.

<sup>159</sup> With regard to tangible personal property, sales tax does not apply on the transfer of capital assets through the sale of an ownership interest of an entity. Use tax is due on such transfers related to tangible personal property where the transferor has not paid sales or use tax on those assets.

<sup>160</sup> Persons performing exchange services in Washington are required to have a tax registration and pay the business and occupation tax on their income from such services. However, you will need to contact the Washington Department of Licensing regarding any special licensing requirements for persons performing exchange services.

<sup>161</sup> Washington law has no provisions for "disregarded" entities, as Washington has no state income tax.

<sup>162</sup> Generally the State of Washington does not recognize the federal income tax treatment of safe harbor parking arrangements, as Washington has no income tax.

<sup>163</sup> 2007-West Virginia questionnaire forwarded to State Tax Commissioner Virgil T. Helton from James Alsop (Cabinet Secy, Dept. of Revenue) for reply on 2/12/07.

<sup>164</sup> A separate legal entity that is disregarded for income tax purposes is separate for sales tax purposes. The owner is required to report sales and use tax on behalf of the disregarded entity.

STATE OR OTHER	QUESTIONS													
	<b>Q1:</b> Does State impose rules/restrictions in addition to federal requirements on what qualifies as "like kind" replacement property in order to qualify for a tax deferral?	<b>Q2:</b> If taxpayer consummates tax deferred exchange of personal property when some of like-kind property is located outside of or is moved outside State does State impose tax treatment different from federal tax deferral treatment?	<b>Q3:</b> Does State require special reporting of an exchange on State tax form?	<b>Q4:</b> If taxpayer consummates partially tax deferred exchange in which non-like property is received, is gain reportable in your State computed with reference to depreciation/cost recovery rates allowed in State or is federal cost recovery/depreciation rates used to compute gain in exchange?	<b>Q5:</b> Does your jurisdiction impose a withholding tax, special estimated tax or similar tax on taxable portion of any exchange proceeds?	<b>Q6:</b> Are tax deferral laws applicable in your State for like-kind exchanges different for resident and non-resident taxpayers in any way?	<b>Q7:</b> Is single owner LLC that is disregarded for federal income tax purposes also disregarded for State income tax purposes?	<b>Q8:</b> Is single-owner LLC that is disregarded for federal income tax purposes also disregarded for purposes of State's sales taxes?	<b>Q9:</b> If State imposes real estate transfer tax, does State impose real estate transfer tax when qualified intermediary or taxpayer involved in exchange transfers ownership of limited liability company that holds record title to exchange property or is the real estate transfer tax only applied when record title to the exchange property is conveyed?	<b>Q10:</b> If State imposes sales or similar tax does State collect sales tax when qualified intermediary or taxpayer involved in exchange transfers ownership of membership interest in LLC that holds title to exchange property or is sales tax only applied when title to exchange property is transferred?	<b>Q11:</b> Does State impose special licensing, bonding or registration requirements on qualified intermediaries or exchange accommodation titleholders that provide exchange services in State?	<b>Q12:</b> Does State recognize special federal income tax treatment?	<b>Q13:</b> (a) Does your State recognize the federal income tax treatment of safe harbor parking arrangements? (b) Are there any unusual features?	
Wyoming/ **	N/A <sup>165</sup>	See Q1	See Q1	Federal – see Q1	See Q1	See Q1	See Q1	No <sup>166</sup>	N/A <sup>167</sup>	Applied on change of record or registered title	<sup>168</sup>	N/A/2007-WY has no personal or corporate income tax	(a) See Q12	(b) 2007- none
Guam	Yes <sup>169</sup>	No	No <sup>170</sup>	Federal	No	No	Yes	Yes	N/R	N/R	No	Yes	(a) Yes	(b)
American Samoa													(a)	(b)
Northern Marianas													(a)	(b)

<sup>165</sup> Wyoming does not have a state income tax.

<sup>166</sup> Corporate structure is not a determinant for disregarding an entity from a sales tax liability in Wyoming.

<sup>167</sup> Wyoming does not have a real estate transfer tax.

<sup>168</sup> There is nothing in our state tax laws that addresses this question. Refer to Wyoming Secretary of State, 307-777-7378, secofstate@state.wy.us.

<sup>169</sup> Guam is allowing U.S. main land replacement property.

<sup>170</sup> Guam does not have any State tax.

STATE OR OTHER	QUESTIONS													
	<b>Q1:</b> Does State impose rules/restrictions in addition to federal requirements on what qualifies as "like kind" replacement property in order to qualify for a tax deferral?	<b>Q2:</b> If taxpayer consummates tax deferred exchange of personal property when some of like-kind property is located outside of or is moved outside State does State impose tax treatment different from federal tax deferral treatment?	<b>Q3:</b> Does State require special reporting of an exchange on State tax form?	<b>Q4:</b> If taxpayer consummates partially tax deferred exchange in which non-like property is received, is gain reportable in your State computed with reference to depreciation/cost recovery rates allowed in State or is federal cost recovery/depreciation rates used to compute gain in exchange?	<b>Q5:</b> Does your jurisdiction impose a withholding tax, special estimated tax or similar tax on taxable portion of any exchange proceeds?	<b>Q6:</b> Are tax deferral laws applicable in your State for like-kind exchanges different for resident and non-resident taxpayers in any way?	<b>Q7:</b> Is single owner LLC that is disregarded for federal income tax purposes also disregarded for State income tax purposes?	<b>Q8:</b> Is single-owner LLC that is disregarded for federal income tax purposes also disregarded for purposes of State's sales taxes?	<b>Q9:</b> If State imposes real estate transfer tax, does State impose real estate transfer tax when qualified intermediary or taxpayer involved in exchange transfers ownership of limited liability company that holds record title to exchange property or is the real estate transfer tax only applied when record title to the exchange property is conveyed?	<b>Q10:</b> If State imposes sales or similar tax does State collect sales tax when qualified intermediary or taxpayer involved in exchange transfers ownership of membership interest in LLC that holds title to exchange property or is sales tax only applied when title to exchange property is transferred?	<b>Q11:</b> Does State impose special licensing, bonding or registration requirements on qualified intermediaries or exchange accommodation titleholders that provide exchange services in State?	<b>Q12:</b> Does State recognize special federal income tax treatment?	<b>Q13:</b> (a) Does your State recognize the federal income tax treatment of safe harbor parking arrangements? (b) Are there any unusual features?	
Puerto Rico*	No	No	No	State	Yes <sup>171</sup>	No	No <sup>172</sup>	No <sup>173</sup>	N/R	N/R	No	No <sup>174</sup>	(a) No <sup>175</sup>	(b)
U.S. Virgin Islands- *no change /**	No	No	No	Federal	No	No	Yes	2007-no sales tax in Virgin Islands	N/A	N/A/2007-no sales tax in Virgin Islands	No	Yes	(a) Yes	(b)

<sup>171</sup> If Seller is a nonresident individual or a foreign corporation not engaged in trade or business in Puerto Rico, withholding rules apply. The withholding tax rates are 10%, 20%, 25% or 29%, as may be the case.

<sup>172</sup> In Puerto Rico, LLCs, as well as partnerships, are treated as regular corporations for income tax purposes.

<sup>173</sup> 2006 response: Although a LLC in Puerto Rico is treated as a regular corporation for both income and sales tax purposes, the state sales and use tax (which will commence on November 15, 2006) will be applied on a location basis. Therefore, a single-owner LLC may or may not be disregarded for sales tax purposes depending on its location at the time of the sale. Puerto Rico does not have sales taxes.

<sup>174</sup> For Puerto Rico income tax purposes, a limited liability company is treated as a corporation. In other words, it is an entity separate from its owners. Therefore, an LLC is taxed on its income, unless its owners elect corporation of individuals treatment.

<sup>175</sup> At this moment, there is no tax provision or case law providing for reverse exchange transactions.



**AMERICAN BAR ASSOCIATION TAX SECTION – SECTION 1031 STATE SURVEY Q & A****(Final Document – Out of 56 Jurisdictions Reporting)**

<b><u>CONTACT INFORMATION</u></b>		
<b><u>STATE/OTHER</u></b>	<b><u>NAME (* new for 2006/**new for 2007)</u></b>	<b><u>PHONE NUMBER (*new for 2006/**new for 2007)</u></b>
Alabama	Michael E. Mason** (Director of Tax Policy & Research)	334-242-1380**
Alaska	Mark Graber	907-269-6626*
Arizona	Dan Jensen*	602-716-6377*
Arkansas	David Foster	501-682-1130
California	Shane Hofeling	916-845-4581
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Illinois	Brian Stocker	217-524-9478*
Indiana	Terry Griggs	317-233-5013
Iowa	Jim McNulty	515-281-6183

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Kentucky	Office of Mark Tresh*	None given
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West Virginia	Virgil T. Helton	
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