Eighth Circuit Sheds Light on Like-Kind Exchanges

BY RICHARD M. LIPTON

Although the related party did not receive a direct tax benefit from the taxpayer's like-kind exchange, the Eighth Circuit found that it received a major financial benefit from holding on to pre-tax proceeds for a short period, which was enough to trigger Section 1031(f)

Recently, in *North Central Rental & Leasing, LLC*, 779 F.3d 738, 115 AFTR2d 2015-993, *aff'g* 112 AFTR2d 2013-7045 (DC N.D., 2013), the Eighth Circuit affirmed a district court decision disallowing like-kind exchange treatment for a rental and leasing business. The decision is important because it highlights steps that a taxpayer should avoid if the taxpayer wants to engage in repeated like-kind exchanges.

FACTS

Butler Machinery Company (Butler) sold agricultural, mining, and construction equipment for manufacturers, primarily Caterpillar. Prior to 2002, Butler conducted a rental and leasing business in conjunction with its retail sales. In that year, Butler formed a subsidiary, North Central Rental & Leasing (North Central) to take over that business.

Although separate entities, Butler and North Central were controlled by the same family, both in terms of ownership and control. Butler shared office space with North Central, performed equipment-ordering functions and paid the wages of North Central's employees. Caterpillar treated the two businesses as separate, but in many other ways they functioned as a single business.

As part of its business of buying and renting equipment, North Central also engaged in like-kind exchanges through its so-called LKE Program. In the LKE Program, North Central sold its used equipment to third parties (Purchasers) and instructed the third parties to pay the sales proceeds to an unrelated qualified intermediary, Accruit LLC (Accruit). Accruit would forward the sale proceeds to Butler, which at about the same time would purchase new Caterpillar equipment

for a partnership interest. The Service held that, assuming that the long-term leasehold interest is binding and legally enforceable and that the contributing partner performs no services for the partnership in exchange for its partnership interest, the contribution of the long-term interest to the partnership will be a contribution of "property" in exchange for a partnership interest under Section 721.

THE PROPERTY REQUIREMENT—EXCEPTIONS

While the term "property," as used in Section 721 is broad, it is not without its limitations. For example, the courts have held that the term does not include certain intangible property created by personal services and does not include property with no value. While neither exception should apply to the Golfer's name and likeness rights, a short description is provided below.

First, the term "property" generally includes intangible property created by personal services, unless such property was created by the transferor specifically for the transferee in accordance with the transferee's specific instructions. For example, in *Gilson*, TCM 1984-447, an independent contractor who contracted with manufacturers to produce patentable industrial designs was found to be a seller of patentable property, not services, because he was not an employee of the manufacturers. Alternatively, in Rev. Rul. 64-56, 1964 CB 133, the Service held that when an asset has been developed specifically for a transferee, the stock received in exchange for such asset may be treated as payment for services rendered. Similarly, if patentable (or copyrightable) intangible property was created by the transferor under a "contract of employment," the transferor is generally treated as receiving compensation for services.[19]

The courts have also held that the term property does not include property that has no value. In *Santa Monica Pictures, LLC*, TCM 2005-104, the court held that a contribution of worthless debt was not a contribution of "property" for purposes of Section 721. Similarly, in *Meyer*, 121 F. Supp. 898, 46 AFTR 192 (Ct. Cl., 1954), the court held that Section 351 did not apply to a transfer of stock in a wholly owned insolvent corporation. In at least one case, however, the courts have held that the transfer of worthless property could qualify as "property" for purposes of Section 351. Specifically, in *Abbrecht*, TCM 1987-199, the court held that Section 351 applied to debt exchanged for stock, although the value of the debt was not shown to have a fair market value greater than zero.

The Golfer's name and likeness rights should not meet the exceptions to the term "property" espoused by the courts and the Service. First, the Golfer's name and likeness rights were not created by the transferor specifically for the transferee. Thus, under *Gilson*, the partnership interest should not be treated as exchanged for services. Second, the Golfer's name and likeness rights have substantial value and thus should not be omitted from the definition of property under *Santa Monica Pictures* and *Meyer*.

THE PROPERTY REQUIREMENT—CONCLUSION

Based on the authorities discussed above, the Golfer's name and likeness rights should qualify as "property" for purposes of Section 721. As a starting point, the term "property" has a "broad reach,"[20] and generally encompasses "whatever may be transferred".[21] Under the reasoning set forth in *Goosen* and *Neon Lights*, the exclusive, worldwide right to use the Golfer's name and likeness rights (not taking into account the limited duration of such rights) should be treated as *property* for purposes of Section 721.

As noted above, the Service and courts have each determined that property with a "length of time carve-out" may constitute "property" for purposes of Sections 351 and 721. For example, in *H.B. Zachry Co.*,[22] the court held that a carved out oil payment was "property" for purposes of Section 351, even though the right lapsed after the holder of the right received $650,000 in payments. Essentially, the interest was limited to the time it would take the one-eighth oil interest to produce the $650,000, notwithstanding the fact that the oil interest would continue to produce income after the $650,000 was paid to the partnership. Similarly, in Ltr. Rul. 8225069, the Service held that the contribution of the right to use land owned by the contributing partner was property for purposes of Section 721, even though the lease was for a period that was less than the useful life of the land.[23]

In the hypothetical transaction, the Golfer transferred the exclusive, worldwide right to use her name and likeness for a period of five years. Similar to the carved out oil payment in *H.B. Zachry Co.* and the land lease in Ltr. Rul. 8225069, the property right was granted for less than the entire useful life of such property. Under the same reasoning as *H.B. Zachry Co.* and Ltr. Rul. 82225069, the Golfer's name and likeness right should qualify as "property" for purposes of Section 721.

Accordingly, the Golfer's name and likeness rights (as described in the hypothetical) should qualify as "property" for purposes of Section 721. ●

NOTES

19 See generally *Downs* , 49 TC 533 (1968); *Blum*, 11 TC 101 (1948); *Gilson*, TCM 1984-447.

20 Rev. Rul. 64-56, 1964 CB 133.

21 See *E.I. Du Pont de Nemours & Co.*, *supra* note 5.

22 See *supra* note 7;

23 While the Service could argue that the lease term was so long that, in essence, the transfer was for the entire useful life of the property, Ltr. Rul. 8225069 does not necessarily stand for the proposition that transferring the right to use property for a period that is less than the useful life of such property fails to meet the Property Requirement. The ruling speaks only to the limited nature of guidance provided by the Service in this area.

and transfer that equipment to North Central via Accruit. Butler charged North Central the same amount that Butler had paid for the equipment that was sold to North Central.

In other words, at first blush there were like-kind exchanges in the LKE Program, in that North Central sold used property (the relinquished property) to unrelated purchasers through Accruit, which conveyed like-kind property to North Central in exchange. Butler's role in these transactions was to acquire the replacement property from Caterpillar, which was then sold by Butler to North Central.

Why did Butler structure the LKE Program in this manner? Because North Central was related to Butler, Caterpillar allowed Butler to take advantage of its deferred payment program (the DRIS program) with respect to payments that Butler owed to Caterpillar. Under the DRIS program, the timing of payments was effectively deferred for up to six months, meaning that, for up to six months, Butler did not have to pay Caterpillar for equipment that Butler purchased. Thus, the LKE Program allowed Butler to receive cash from Accruit as a result of the sale of the relinquished property in the exchange (North Central's used equipment sold to third parties), but Butler was not required to make payments to Caterpillar with respect to the purchase of the replacement property sold to North Central for up to six months. As a result of the LKE Program, Butler effectively received a six-month, interest-free loan of cash with respect to the exchange proceeds from each exchange.

The IRS challenged the tax treatment of 398 sales by North Central during the period 2004 to 2007. The IRS contended that these transactions were not entitled to non-recognition pursuant to Section 1031(f), which addresses related-party exchanges. The taxpayer paid the tax and filed a claim for refund, followed by a suit in the district court in North Dakota. The district court held in favor of the government because Butler (a related party) had the unfettered use of the cash that resulted from the exchange. The taxpayer appealed this result to the Eighth Circuit.

APPLICABLE LAW

As is well known, a taxpayer can defer recognizing gain under Section 1031 when property held for productive use in a trade or business or for investment (the relinquished property) is exchanged solely for property of a like kind that is to be held either for productive use in a trade or business or for investment. The legislative history of Section 1031 makes it clear that the statute was intended to avoid taxation when taxpayers do not "cash in" on their investments in property used in a trade or business or held for investment.[1]

Reg. 1.1031(k)-1(g)(4) allows a taxpayer to use a qualified intermediary to facilitate a like-kind exchange. The qualified intermediary is not treated as an agent of the taxpayer. Instead, in the case of a transfer of relinquished property involving a qualified intermediary, the taxpayer's transfer of relinquished property to the qualified intermediary and the subsequent receipt of like-kind property from the qualified intermediary are treated as an exchange.

In 1989, Congress closed a potential loophole in Section 1031 by enacting Section 1031(f), which addressed related-party like-kind exchanges.[2] Prior to the enactment of Section 1031(f), assume that a taxpayer and a related party owned like-kind property (say, real estate named Blackacre and Whiteacre), in which Blackacre had a low basis and Whiteacre had a high basis. Assume that the related parties wanted to dispose of Blackacre but not pay any tax. The related parties could (1) exchange Blackacre for Whiteacre, in which case Blackacre would take as its basis in Blackacre its high basis in Whiteacre, and then (2) sell Blackacre in a transaction in which less gain (or even a loss) was recognized. Moreover, the related parties (viewed collectively) would end up owning Whiteacre and hold cash without any gain recognition–the low basis property had been sold and the gain inherent in Blackacre had been shifted to Whiteacre. As a result of this series of transactions, the related entities could sell a property without gain recognition and end up with cash!

Section 1031(f)(1) generally prohibits nonrecognition treatment for exchanges in which a taxpayer exchanges property with a related person and either party then disposes of the exchanged property within two years. Moreover, in an attempt to thwart the future use of more complex transactions that technically avoid the provisions of Section 1031(f) but run afoul of the purposes of the law, Congress enacted Section 1031(f)(4), which prohibits nonrecognition treatment for any exchange that is part of a transaction (or series of transactions) structured to avoid the purposes of Section 1031(f).

OPINION

The question in this case was whether Section 1031(f) prohibits nonrecognition of gain. It was clear that North Central would not have recognized any gain if it had engaged in direct exchanges with Caterpillar, i.e., North Central could have sold its used equipment to third parties and used the sales proceeds to complete like-kind exchanges (through Accruit) with Caterpillar. The issue was whether like-kind exchange treatment was effectively voided because of the insertion of Butler into the transactions.

There were two prior decisions viewed as relevant in determining the tax consequences of this transaction. *Teruya Brothers Ltd. & Subs.*, 124 TC 45 (2005), *aff'd* 580 F3d 1038, 104 AFTR2d 2009-6274 (CA-9, 2009), was the first case to consider the interaction of these rules. In that case, the taxpayer negotiated the sale of relatively low-basis real property to an unrelated person. In anticipation of the sale, the taxpayer arranged to purchase relatively high-basis replacement prop-

1 See *Starker*, 602 F.2d 1341, 44 AFTR2d 79-5525 (CA-9, 1979).

2 P.L. 101-239, 12/19/89.

erty from a related person. To carry out the transaction, the taxpayer arranged for a qualified intermediary to acquire the property from the taxpayer and sell it to an unrelated person, and to use the proceeds to acquire the replacement property from the related person and transfer that replacement property to the taxpayer.

The Tax Court in *Teruya Brothers* concluded that the transaction was economically equivalent to a direct exchange of properties between the taxpayer and the related person, followed by the related person's sale of the property it received to an unrelated third party (which would cause the transaction to be within the scope of Section 1031(f)(1)). According to the court, the presence of the qualified intermediary did not change this result. The court then considered whether avoidance of federal income tax was one of the principal purposes of the deemed exchange, because the non-tax-avoidance exception in Section 1031(f)(2) has to be considered in determining the application of Section 1031(f)(4). The court concluded that the transaction was taxable because its economic substance was that the investments in the relinquished properties were cashed out, with the proceeds ending up in the hands of the related party, with tax savings resulting from the transaction.

The second relevant decision was *Ocmulgee Fields, Inc.*, 132 TC 105 (2009), *aff'd* 613 F.3d 1360, 106 AFTR2d 2010-5820 (CA-11, 2010). Ocmulgee Fields, Inc. (OFI) was a fiscal-year Georgia corporation organized in 1973 by Charles Jones to develop, own, and manage real estate in the Macon area. During OFI's 2004 tax year (ending 5/31/04), its principal shareholders were Charles and his sons, Dwight and Jeff. OFI owned, among other properties, the Wesleyan Station Shopping Center and part of the Rivergate Shopping Center in Macon.

In addition to owning OFI, Charles and his sons, as well as other related entities, were among the largest owners of commercial real property in Macon and surrounding areas. One of these assets, called "Barnes & Noble Corner," had been owned by OFI until it was sold in 1996 to Treaty Fields, a Georgia LLC owned by Dwight and Charles. Barnes & Noble Corner was undeveloped real property located near Rivergate.

OFI was not looking to sell Wesleyan Station. Nevertheless, on 7/17/03, after Dwight met Scott Wilson, OFI entered into an agreement (the "McEachern agreement") for the sale of Wesleyan Station to Wilson and trusts established under the will of Wilson's father-in-law, John McEachern. The McEachern agreement provided that the purchase price for Wesleyan Station would be $7.25 million, the closing would take place on or before 10/10/03, and that OFI intended to structure the transaction as a like-kind exchange and could assign its interest to a qualified intermediary.

Raymond Pippin was a CPA and a member of the largest accounting firm in Macon. Even before OFI entered into the McEachern agreement, Dwight had asked Pippin if he was aware of any income-producing commercial real property in the Macon area that could be acquired as replacement property. Pippin indicated that he was not; Dwight then requested that both Pippin and Wilson, as well as OFI's real estate lawyer and two commercial brokers, assist OFI in finding replacement property. On 10/9/03, OFI engaged Security Bank to act as a qualified intermediary. On that date, OFI assigned its rights to sell Wesleyan Station to Security Bank. The next day, pursuant to the McEachern agreement, Security Bank, acting as a qualified intermediary for OFI, sold Wesleyan Station.

Prior to the deadline for the closing of the McEachern agreement on 10/10/03, OFI had considered and rejected (for various reasons) at least six possible replacement properties presented by various real estate brokers. As October 10 neared, Dwight began to consider having OFI reacquire the Barnes & Noble Corner as replacement property for Wesleyan Station. On October 15, OFI and Treaty Fields entered into a contract for the purchase of the Barnes & Noble Corner. OFI subsequently assigned its rights under that contract to Security Bank, as qualified intermediary. On 11/4/03, Treaty Fields sold the Barnes & Noble Corner to Security Bank for $6,740,900, and because Treaty Fields had a basis in the property of $2,554,901, the gain recognized by Treaty Fields was $4,185,999. Security Bank then conveyed the Barnes & Noble Corner to OFI as replacement property for Wesleyan Station.

On its tax returns for the year ended 5/31/04, OFI reported that its adjusted basis in Wesleyan Station was $716,164, and since the sale price of Wesleyan Station was $6,838,900, OFI's gain was $6,122,736. OFI also reported that its basis in the replacement property (Barnes & Noble Corner) was the same $716,164. Pippin prepared OFI's tax return and treated this transaction as a valid Section 1031 exchange. The IRS determined that the transaction did not satisfy the requirements of Section 1031 on the grounds that Section 1031(f) applied.

The Eighth Circuit's decision in *North Central* highlights one of the unspoken rules of like-kind exchanges—do not acquire replacement property from a related party.

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The Service also asserted an accuracy-related penalty.

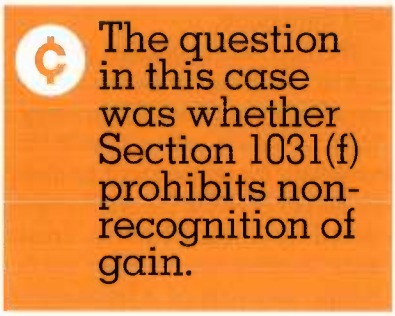
The Service argued that this case was similar to *Teruya Brothers*, in which the Tax Court found that a sale of property did not qualify for nonrecognition under Section 1031(a) when the replacement property was acquired from a related party, notwithstanding that the sale was technically made through an unrelated qualified intermediary. The court applied Section 1031(f)(l) to that transaction by disregarding the qualified intermediary and treating the transaction as an exchange between related parties that was structured to avoid the purposes of Section 1031(f)(l).

The Tax Court in *Ocmulgee Fields* viewed *Teruya Brothers* as requiring, first, a determination whether the transaction was covered by the anti-abuse rule in Section 1031(f)(4) and second, if that provision applied, whether one of the exceptions set forth in Section 103l(f)(2) could alter the result. More succinctly, the court stated that gain would be recognized by OFI on its exchange of Wesleyan Station for the Barnes & Noble Corner if the exchange was part of a transaction or series of transactions structured to avoid the purposes of Section 1031(f), taking into account the history of that provision as well as the Tax Court's prior decision in *Teruya Brothers*.

According to the Tax Court, the purpose of Section 1031(f)(1) was to prevent transactions in which a taxpayer who anticipated the sale of low-basis property exchanged that property for high-basis property owned by a related person, with the related person then selling the property received in the exchange at a reduced gain (or possibly a loss) as a result of the rule in Section 1031(d) that property acquired in a like-kind exchange generally takes the basis of the property relinquished. The *Ocmulgee* court quoted the *Teruya Brothers* opinion: "Congress concluded that if a related party exchange is followed shortly thereafter by a disposition of the property, the related parties have, in effect, 'cashed out' of the investment, and the original exchange should not be accorded nonrecognition treatment." Furthermore, Section 1031(f)(4) was enacted in response to Congress's concern that related persons not be able to circumvent the purposes of Section 1031(f)(l) by interposing an exchange with an unrelated third party.

The Tax Court concluded in *Ocmulgee* that the situation was similar to *Teruya Brothers* because OFI exchanged Wesleyan Station with a qualified intermediary for replacement property (the Barnes & Noble Corner) formerly owned by a related party, Treaty Fields. To determine whether the exchange was part of a transaction structured to avoid the purposes of Section 1031(f), the Tax Court considered how OFI would have fared had it instead exchanged Wesleyan Station with Treaty Fields for the Barnes & Noble Corner, and Treaty Fields had sold Wesleyan Station. Because that

transaction would be squarely described in Section 1031(f)(l), the transaction would be taxable unless the taxpayer could establish that the deemed sale of Wesleyan Station did not have avoidance of federal income tax as one of its principal purposes (within the meaning of Section 1031(f)(2)(C)).



The legislative history of Section 1031(f)(2)(C) indicated that the non-tax-avoidance exception to Section 1031(f)(l) would apply to, among others, transactions that do not involve the shifting of basis between properties.[3] In the *Ocmulgee* transaction, however, if Treaty Fields had received Wesleyan Station from OFI in exchange for the Barnes & Noble Corner, Treaty Field's adjusted basis of $2,554,901 in the Barnes & Noble Corner would have shifted to Wesleyan Station, which had a basis of only $716,164 in the hands of OFI. Because of that step-up in basis, Treaty Fields would have realized a gain on the sale of Wesleyan Station that was approximately $1.8 million less than what OFI would have realized without the exchange. The court emphasized that while the legislative history of Section 1031(f)(2) identified transactions not involving basis shifting as transactions generally lacking tax avoidance as a principal purpose, a fair inference is that federal income tax avoidance generally is a principal purpose of transactions involving basis shifting.

The transaction at issue in *North Central* was similar to these transactions in that it involved a like-kind exchange in which the taxpayer (North Central) acquired replacement property from a related party. North Central argued that the transaction should be respected because it was easier and more efficient for Butler to acquire property from Caterpillar (instead of North Central having to deal directly with Caterpillar), but this argument was somewhat belied by the fact that North Central had the ability and necessary transaction codes to engage in direct purchases from Caterpillar. The LKE Program allowed Butler to obtain six-month, interest-free loans because it received the purchase price for the new equipment from North Central but did not owe any payments to Caterpillar for that period. Butler contended that North Central could have obtained the same favorable financing terms from Caterpillar, but the evidence at trial (supplied by Accruit) was that North Central would have been required to pay immediately for any equipment that it purchased directly from Caterpillar, whereas Butler did not have to do so. In other words, if Butler had not been involved in these transactions, there would not have been an interest-free loan.

Moreover, the amounts of these loans were not small. There were 350 exchanges during the period at issue, and the size of the average exchange exceeded $600,000. As a result, the amount of the interest-free loan that Butler was able to obtain from Caterpillar exceeded $210 million. Although the term of the loan was short (less than six months) and the principal effectively "rolled" as the various exchanges occurred and the purchase price needed to be paid on the replacement property purchased from Caterpillar, there was in fact a substantial benefit to Butler from these transactions.

According to the Eighth Circuit, the fact that Butler was not essential to the exchanges–except to receive an interest-free loan involving funds that were not subject to taxation–made this transaction similar to the failed exchanges in *Teruya Brothers* and *Ocmulgee Fields*. In those cases, as in this *North Central*, the taxpayer had attempted to acquire replacement property from a related party. The courts held that there was a tax benefit obtained by the taxpayer, so that Section 1031(f)(4) was implicated.

So far, the Eighth Circuit's decision at least makes sense. However, the court then turned to the role of the qualified intermediary, Accruit, in this transaction. The court stated that Accruit was also an unnecessary party to the transaction, because Butler and North Central could have exchanged property directly with each other and without Accruit's involvement. This was viewed by the court as an "unnecessary layer of complexity" that supported the application of Section 1031(f). The use of the qualified intermediary was viewed by the court as part of the structure to avoid application of Section 1031(f), citing to similar language in *Teruya Brothers* and *Ocmulgee Fields*.

The taxpayer contended that Accruit's role was necessary to comply with the safe harbor for like-kind exchanges. However, the Eighth Circuit rejected this argument, stating that it had not been shown that the district court committed "clear error" in finding that the intent behind the transaction's structure (including the role of Accruit) was to avoid Section 1031(f). However, the appellate court emphasized that its primary concern was not the role of Accruit in these transactions but, rather, the fact that Butler Machinery used these transactions to obtain interest-free loans. Accordingly, it held that the transactions were not eligible for like-kind exchange treatment under Section 1031(a) because the transactions were structured to avoid the application of Section 1031(f).

ANALYSIS

The Eighth Circuit's decision in *North Central* highlights one of the unspoken rules of like-kind exchanges–do not acquire replacement property from a related party. In the prior decisions involving receipt of replacement property from a related party, *Teruya Brothers* and *Ocmulgee Fields*, there was a direct tax benefit because the tax-

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3 H Conf. Rep't. No. 101-386, 101st Cong., 1st Sess. 614 (1989).

payer recognized less gain with respect to the sale of the replacement property than would have been recognized on a direct sale of the relinquished property. In this case, the related party (Butler) did not own the replacement property beforehand, so there was no direct tax benefit as in the prior cases, although it could be argued that there was a similar benefit because gain was not recognized by Butler. However, Butler obtained a major financial benefit by getting to keep the pre-tax proceeds from the sale of the relinquished property for six months, and then use the money to pay Caterpillar. Thus, although there was no substitution of basis as in *Teruya Brothers*, there was an after-tax benefit to Butler which was sufficient to trigger the application of Section 1031(f).

It could be argued that the decision in *North Central* is beyond the scope of Section 1031(f)(4). Indeed, there is a good argument that Section 1031(f)(4) was intended to be limited to transactions in which there was a direct exchange with a related party but Section 1031(f)(1) did not apply for some technical reason. However, the contention that Section 1031(f)(4) should be applied narrowly was firmly rejected in *Teruya Brothers*, and it is likely too late for taxpayers to raise that argument successfully.

So what could North Central have done if it wanted to obtain the interest-free use of the proceeds from the sales of relinquished property while still acquiring replacement property immediately from Caterpillar? It turns out there was a planning opportunity in this situation, which would have required the more-active involvement of the qualified intermediary, Accruit. Because Accruit was not related to North Central, Accruit could have been used to obtain benefits that were not available in the actual transaction because of the presence of a related party.

Specifically, assume that Caterpillar would have been willing to sell the replacement property directly to North Central and be paid after six months without interest, in the same manner that Caterpillar was willing to provide interest-free financing to Butler. In that case, as the relinquished property was sold, North Central could have acquired property directly from Caterpillar in exchange for a note from Accruit (or, more likely, the special purpose LLC that Accruit would have formed to engage in these exchanges). Accruit would then convey the property to North Central to complete the exchanges on a tax-free basis. Accruit would then place the cash proceeds from the sale of the relinquished property in an account for the benefit of North Central, and when the notes to Caterpillar were then paid, any remaining amounts held in the account would be paid over to North Central. As a practical matter, North Central would be able to invest the sale proceeds from the relinquished property for six months while still engaging immediately in leasing with respect to the replacement property.

Although this transaction likely "works," it would not have been as attractive to Butler and/or North Central because the funds received in the exchange would continue to be held by Accruit. Although there would be financial benefits from an interest-free loan, that benefit is much less than could be obtained by using the exchange proceeds as working capital. However, this benefit turned out to be "a bridge too far" and caused the potential interest-free loan to become a taxable transaction, reducing the net after-tax proceeds available to North Central as a result of the interest-free financing that was available from Caterpillar. Thus, this case illustrates another maxim of tax planning, which is not to get too greedy in attempting to obtain tax benefits from a like-kind exchange. If there had been no related party in this transaction, there would have been nothing for the IRS to attack. ●