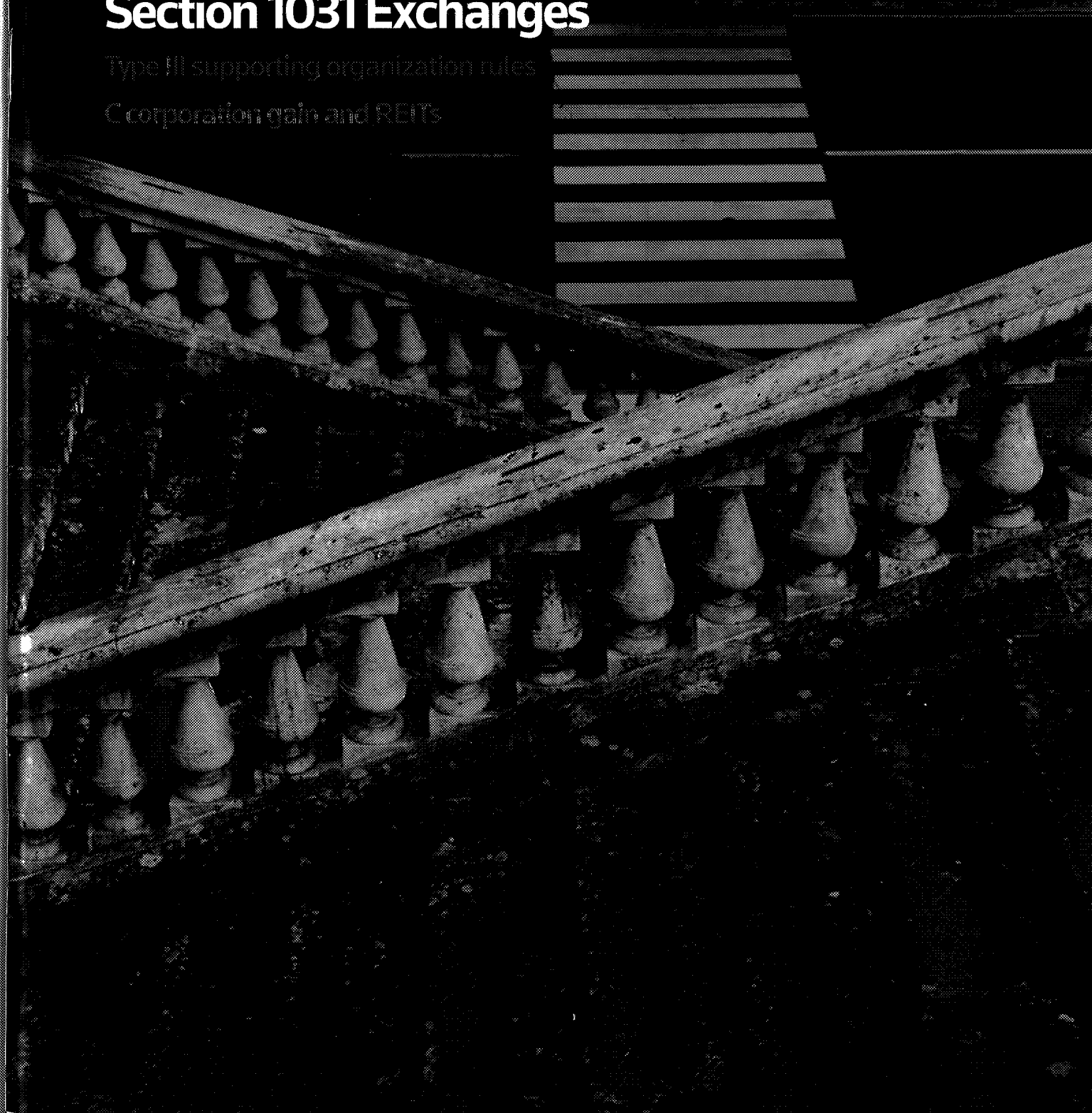


# Journal of Taxation

## Structuring Section 1031 Exchanges

Type III supporting organization rules

C corporation gain and REITs



# Tax Court Finally Unveils Reverse Exchange Principle in *Bartell*, But Stay Tuned

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**In *Bartell*, the Tax Court follows precedent in giving taxpayers freedom to choose the structure of Section 1031 exchanges as long as the proper form is followed.**

On 8/10/16, the Tax Court released its long awaited opinion in *Bartell*, 147 TC No. 5, addressing standards applicable to accommodation ownership of property in a "reverse" Section 1031 exchange that is not within the safe harbor offered by Rev. Proc. 2000-37, 2000-2 CB 308 (the "Safe Harbor"). The opinion comes out squarely supporting a strictly form driven analysis of accommodation ownership arrangements in contrast to a "benefits and burdens" test asserted by the Service. This article reviews the positions of the taxpayer and the Service in *Bartell*, discusses the generally applicable law, and examines the Tax Court's analysis and conclusions. The article then identifies implications of the opinion for future like-kind exchange planning as well as a number of questions that remain open for advisors to ponder.

## BACKGROUND

Bartell Drug Co. (BDC), an S corporation, was founded in 1890 and developed and owned a chain of retail drugstores in Seattle, Washington and surrounding areas over the ensuing 100 years. Ownership of the company had been in the Bartell family since its founding. In 1999-2002 (the years at issue), stock was held by George H. Bartell, Jr and his children George D. Bartell and Jean Bartell Barber.

Before the 1980s, BDC owned some of the properties in which it operated and leased others. The locations were typically in grocery store-anchored shopping centers, with the BDC location being "in-line" with other merchants in a multi-tenant building. Starting in the 1980s, two major changes in the competitive landscape occurred that caused BDC to change its business model. First,