

[Law Firm/Accounting Firm Letterhead]

[Date]

[Client Name]

[Client Address]

RE: Tax Opinion Regarding "Drop-and-Swap" Structured Internal Revenue Code Section 1031 Exchange

Dear [Client Name],

You have requested our legal opinion regarding the federal income tax consequences of a proposed "drop-and-swap" transaction involving [Partnership Name] (the "Partnership") and its underlying real property located at [Property Address] (the "Property").

FACTUAL BACKGROUND

The Partnership currently holds fee simple title to the Property. The Partnership intends to distribute undivided tenant-in-common ("TIC") interests in the Property to its partners in proportion to their respective partnership interests (the "Distribution"). Following the Distribution, certain former partners (the "Exchanging Owners") intend to exchange their TIC interests for replacement property in a transaction intended to qualify for non-recognition of gain under Section 1031 of the Internal Revenue Code (the "Exchange").

DOCUMENTS REVIEWED

In rendering this opinion, we have examined the following:

1. The Partnership Agreement of [Partnership Name];
2. The proposed Deed(s) of Distribution;
3. The Tenants-in-Common Agreement; and
4. The Purchase and Sale Agreement for the Property.

OPINION

Based upon the foregoing and subject to the limitations set forth herein, it is our opinion that:

1. The Distribution of the Property to the partners should be respected as a distribution under Section 731 of the Code.
2. The subsequent Exchange of the TIC interests by the Exchanging Owners should qualify for tax-deferred treatment under Section 1031, provided that the Exchanging Owners are deemed to have held the TIC interests for investment or use in a trade or business.

DISCUSSION AND ANALYSIS

Our opinion is based on the "holding" requirement of Section 1031. While the Internal Revenue Service has historically challenged transactions where the distribution occurs immediately prior to the exchange, judicial precedents such as *Bolker v. Commissioner* and *Magneson v. Commissioner* suggest that a taxpayer who acquires property in a tax-free distribution from a partnership and immediately exchanges it may satisfy the "held for" requirement if the taxpayer intends to continue holding the investment in a different form.

LIMITATIONS

This opinion is based on the Internal Revenue Code of 1986, as amended, and existing judicial and administrative interpretations thereof. This opinion is provided solely for your benefit and may not be relied upon by any other person or entity without our express written consent.

Very truly yours,

[Signature]

[Printed Name of Attorney/Partner]

[Firm Name]