

# 1995



Department of the Treasury  
Internal Revenue Service

# Instructions for Form 8824

## Like-Kind Exchanges

Section references are to the Internal Revenue Code unless otherwise noted.

### Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: **Recordkeeping**, 26 min.; **Learning about the law or the form**, 28 min.; **Preparing the form**, 1 hr., 2 min.; **Copying, assembling, and sending the form to the IRS**, 27 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.

### General Instructions

#### Purpose of Form

Use Parts I, II, and III of Form 8824 to report the exchange of business or investment property for property that is of a like kind (section 1031). Use Part IV of Form 8824 to report the nonrecognition of gain from conflict-of-interest sales by certain members of the executive branch of the Federal Government (section 1043).

For more information on like-kind exchanges, see section 1031, Regulations section 1.1031, and **Pub. 544**, Sales and Other Dispositions of Assets.

#### When To File

For each like-kind exchange, you must file Form 8824 for the tax year in which you transferred the property you gave up to the other party to the exchange. If the exchange was made with a related party (defined later), you must also file Form 8824 for the 2 years following the year of the exchange.

#### Like-Kind Exchanges

Generally, if you exchange business or investment property solely for business or investment property of a like kind, no gain or loss is recognized under section 1031. If you also receive other property or money, then the gain, if any, is recognized to the extent of the other property or money received, but a loss is not recognized.

Section 1031 does not apply to exchanges of inventory, stocks, bonds, notes, other securities or evidence of indebtedness, and certain other assets. See section 1031(a)(2).

#### Like-Kind Property

Properties are of a like kind if they are of the same nature or character, even if they differ in grade or quality. Personal properties of a like class are also considered to be of a like kind. Real property is of the same kind as other real property, regardless of whether the properties are improved or unimproved. However, real property located in the United States and real property located outside the United States are **not** properties of a like kind.

#### Deferred Exchanges

A deferred exchange is one in which the property received in the exchange is not received immediately upon the transfer of the property given up in the exchange. For a deferred exchange to qualify as a like-kind exchange, the following requirements must be met:

1. The replacement property to be received by you in the exchange must be identified within 45 days after the date on which you transferred the property given up, and
2. You must receive the new property by the earlier of (a) 180 days after the date on which you transferred the property given up, or (b) the due date of your tax return for the year of the transfer (including extensions).

Property is properly identified by notifying, in writing, another party to the exchange (other than a related party) of your selection of the property. The identification may also be made in a written agreement for the exchange of properties.

#### Multi-Asset Exchanges

**Exchanges of multiple properties.**—An exchange of multiple properties occurs if the properties exchanged consist of more than one group of like-kind properties being transferred and received. For example, an exchange of land, vehicles, and cash for land and vehicles would be an exchange of multiple properties. An exchange of land, vehicles, and cash for only land would not be an exchange of multiple properties.

In addition, an exchange is an exchange of multiple properties if only one group of like-kind properties is created but there is more than one property being transferred or received within that group.

Special rules apply when figuring the amount of gain recognized and the basis of properties received in an exchange of multiple properties. See Regulations section 1.1031(j)-1 for details.

**Transfer and receipt of both like-kind and other property.**—Special rules also apply when figuring the amount of gain recognized and the basis of property received in an exchange involving the transfer and receipt of

both like-kind and other property that does not qualify as an exchange of multiple properties. See Regulations section 1.1031(d)-1 for details.

**Reporting of multi-asset exchanges.**—If you transferred and received (a) more than one group of like-kind properties, or (b) cash or other (not like-kind) property, do not complete lines 12 through 18 of Form 8824. Instead, attach a statement showing the computation of the realized and recognized gain, and enter the correct amount for lines 19 through 25. Report any gain recognized on **Schedule D, Form 4797**, Sales of Business Property, or **Form 6252**, Installment Sale Income, whichever applies.

#### Related Party Exchanges

Special rules apply to like-kind exchanges made with a related party. A **related party** includes your spouse, child, grandchild, parent, brother or sister, or a related corporation, S corporation, partnership, or trust. See section 1031(f).

If either you or the related party disposes of the property received in the exchange before the date that is 2 years after the last transfer of property that is part of the exchange, the deferred gain or (loss) from line 24 must be reported on your return (unless one of the exceptions shown on line 11 applies).

If you are filing this form for 1 of the 2 years following the year of the exchange, complete Parts I and II. If both lines 9 and 10 are "No," stop there and attach the form to your return. If either line 9 or line 10 is "Yes" and one of the exceptions on line 11 applies, check the applicable box on line 11, stop there, and attach the form to your return. If none of the exceptions on line 11 applies, complete Part III. The deferred gain or (loss) from line 24 must be reported on your return for this tax year in the same manner as if the exchange had been a sale.

An exchange that is structured to avoid the related party rules is not eligible for like-kind exchange treatment. See section 1031(f)(4).

#### Specific Instructions

**Lines 1 and 2.**—For real property, show the address, type of property, and include the country if located outside the United States. For personal property, enter a short description.

**Line 5.**—See **Deferred Exchanges** above.

**Line 7.**—See **Related Party Exchanges** above.

**Line 11c.**—If you believe that you can establish to the satisfaction of the IRS that tax avoidance was not a principal purpose of both the exchange and the disposition, attach an explanation. See **Pub. 537**, Installment Sales, for exceptions where tax avoidance is not a principal purpose.

**Lines 12, 13, and 14.**—If you gave up other property in the exchange in addition to the like-kind property, enter the fair market value (FMV) and your adjusted basis of the other property on lines 12 and 13. The gain or (loss) from this property is figured on line 14 and must be reported on your return. Report the gain or (loss) in the same manner as if the exchange had been a sale.

If you did not give up other property, skip lines 12 through 14 and go to line 15.

**Line 15.**—Include on line 15 the sum of the following:

- Any cash paid to you by the other party,
- The FMV of other (not like-kind) property you received, if any, AND
- Net liabilities assumed by the other party—the excess, if any, of any liabilities assumed by the other party (including any mortgages to which the property you gave up was subject) **over** the **total** of: (a) any liabilities you assumed (or to which the property you received was subject), (b) cash you paid to the other party, and (c) the FMV of other property you gave up.

Reduce the sum of the above amounts (but not below zero) by any exchange expenses you incurred.

See the example below the line 18 instructions.

**Line 18.**—Include on line 18 the sum of the following:

- The adjusted basis of the like-kind property you gave up,
- Exchange expenses, if any (except for expenses used to reduce the amount reported on line 15), AND
- Net amount paid to other party—the excess, if any, of the **total** of: (a) any liabilities you assumed, (b) cash you paid to the other party, and (c) the FMV of the other property you gave up, **over** any liabilities assumed by the other party.

See the example below for how to figure the amounts to be entered on lines 15 and 18. Also see Regulations section 1.1031(d)-2.

**Example.** D owns an apartment house with an FMV of \$220,000, an adjusted basis of \$100,000, and subject to a mortgage of \$80,000. E owns an apartment house with an FMV of \$250,000, an adjusted basis of \$175,000, and subject to a mortgage of \$150,000. D transfers his apartment house to E, and receives in exchange the apartment house owned by E and \$40,000 in cash. Each apartment house is transferred subject to the mortgage on it.

D would enter on line 15 only the \$40,000 of cash received from E. The \$80,000 of liabilities assumed by E is not included because it does not exceed the \$150,000 of liabilities D assumed. D would enter \$170,000 on line 18—the \$100,000 adjusted basis, plus the \$70,000 excess of the liabilities D

assumed over the liabilities assumed by E (\$150,000 – \$80,000).

E would enter \$30,000 on line 15—the excess of the \$150,000 of liabilities assumed by D over the total of the \$80,000 of liabilities E assumed and the \$40,000 of cash E paid. E would enter on line 18 only the adjusted basis of \$175,000, because the total of the \$80,000 of liabilities E assumed and the \$40,000 of cash E paid (\$120,000) does not exceed the \$150,000 of liabilities assumed by D.

**Line 21—Ordinary income under recapture rules.**—If you disposed of section 1245, 1250, 1252, 1254, or 1255 property (see the instructions for Part III of Form 4797), you may be required to recapture as ordinary income part or all of the realized gain (line 19). Figure the amount to enter on line 21 as follows:

1. For section 1245 property, enter the **smaller** of (a) the total adjustments for deductions (whether for the same or other property) allowed or allowable to you or any other person for depreciation or amortization (up to the amount of the gain shown on line 19), or (b) the gain shown on line 20, if any, **plus** the FMV of non-section 1245 like-kind property acquired.

2. For section 1250 property, enter the **larger** of (a) the **excess**, if any, of the gain you would have had to report as ordinary income because of additional depreciation (see the Form 4797 instructions for line 28) if you had sold the property **over** the FMV of the section 1250 property acquired, or (b) the gain shown on line 20, if any.

3. For section 1252, 1254, and 1255 property, rules similar to the rules for section 1245 property apply. See Regulations section 1.1252-2(d) and Temporary Regulations section 16A.1255-2(c) for details.

If the installment method applies to this exchange, see section 453(f)(6) to determine the amount of installment sale income taxable this year and report it on Form 6252. Enter on Form 6252, line 25 or 36, the recapture amount under section 1252, 1254, or 1255 you figured on Form 8824, line 21, but do not enter more than the amount shown on Form 6252, line 24 or 35. Also, enter this amount on Form 4797, line 16. If you do not have to recapture all the ordinary income this year, you must report on Form 6252 the ordinary income up to the taxable installment sale income in future years until it is all reported.

**Line 22.**—Report a gain from the exchange of property used in a trade or business (and other noncapital assets) on Form 4797, line 5 or 17. Report a gain from the exchange of capital assets according to the instructions for Schedule D for your return. If the installment method applies to this exchange, see section 453(f)(6) to determine the amount taxable this year and report it on Form 6252.

**Line 24—Deferred gain or (loss).**—If line 19 is a loss, enter on line 24 the loss from line 19. Otherwise, subtract the amount on line

23, if any, from the amount on line 19 and enter the result.

If the exchange was made with a related party, and either you **or** the related party disposes of the property received in the exchange before the date that is 2 years after the last transfer of property that was part of the exchange, you must report the deferred gain or (loss) on your return in the year of the disposition (unless one of the exceptions on line 11 applies). Report the gain or (loss) in the same manner as if the exchange had been a sale. See **Related Party Exchanges** on page 1.

**Line 25—Basis of like-kind property received.**—The amount on line 25 is your basis of the like-kind property you received in the exchange. The basis of other property received in the exchange, if any, is its FMV.

## Part IV—Section 1043 Conflict-of-Interest Sales

If you sell property at a gain according to a certificate of divestiture issued by the Office of Government Ethics, you may elect to recognize gain on the sale only to the extent that the amount realized on the sale exceeds the cost of replacement property (permitted property) purchased within 60 days after the sale. Complete Part IV of Form 8824 only if the cost of the replacement property exceeds the basis of the divested property. Otherwise, report the gain on Schedule D or Form 4797, whichever applies.

Basis in the replacement property is reduced by the amount of the gain not recognized. If more than one purchase of replacement property is made, reduce the basis of the replacement property in the order that the property was acquired.

Permitted property is any obligation of the United States or any diversified investment fund approved by the Office of Government Ethics.

**Line 29.**—Enter the amount you received from the sale of the divested property, minus any selling expenses.

**Line 34—Ordinary income under recapture rules.**—Use Part III of Form 4797 as a worksheet to figure ordinary income under the recapture rules, and enter on Form 8824, line 34, the amount from Form 4797, line 33. Do not attach the Form 4797 used as a worksheet to your return.

Report the amount from line 34 on Form 4797, line 11, column (h). In column (a), write "From Form 8824, line 34." Do not complete columns (b) through (g).

**Line 35.**—If you sold a capital asset, enter the gain, if any, from line 35 on Schedule D, line 4 or 12, column (g). If you sold property used in a trade or business (or any other noncapital asset), report the gain on Form 4797, line 2 or 11, column (h). In column (a), write "From Form 8824, line 35." Do not complete columns (b) through (g).

