



Farm and Ranch Exchanges

Agricultural land owners with taxable capital gains will benefit greatly from the exchange of their farm or ranch land into other farm and ranch land, or any other real estate meeting the qualified use test. The grade or quality of that land; its soil content, water resources, or terrain features is irrelevant in meeting the qualified use requirements of a 1031 exchange. Property held for productive use in a trade, business, or held for investment may be exchanged into other “like-kind” property held for productive use in a trade, business, or held for investment. A property owner could exchange out of farm and ranch land and in return acquire;

- More farm or ranch land
- Commercial, industrial, or multifamily property
- Residential income producing property
- Tenant in Common income producing property

Water rights are also of real concern to many agricultural operators. Under the Food and Energy Security Act of 2007 (“the Act”), mutual irrigation ditch, irrigation or reservoir company stock (“Water Stock”) may now be eligible for 1031 exchanges, and may also be like-kind to real estate (see IRC §501(c)(12)(A)). The Farm Bill amends IRC §1031(a)(2)(B) to exclude Water Stock from “stocks, bonds, or notes” which are usually not eligible for a 1031 exchange. So, Water Stock may be eligible for a 1031 exchange, and perhaps even with real property. But there might be a catch.

It would be nice for exchangers if the language were clear in stating that the now not excluded stock was like kind with real property, and not just like kind with other Water Stock. Water Stock is usually seen as a water right, used on farm land to irrigate crops. These water rights, as a kind of mineral asset, are generally considered to be an interest in real estate, and thus generally considered to be like-kind to real property. They are often transferred as part of the realty when farm land is sold or exchanged in states such as Colorado. It was the intent of the Colorado senators to qualify ditch stock as like-kind to a fee interest in real estate for exchanges of farm land. Unfortunately, this intent is somewhat unclear in the language of the Farm Bill.

In order to qualify, Section 15342 of the Farm Bill makes it clear that such ditch stock has to be recognized as real property in the state in which the corporation is located. Water Stock in your state may or may not qualify, depending on circumstances in your state.

Ambiguity in the language of the Farm Bill has caused some experts to be concerned that, perhaps, ditch stock can only be exchanged for other ditch stock. Nevertheless, it is fairly clear that the proponents of this amendment believed that they were making qualifying ditch stock like kind to other interests in real estate. So, consult your legal adviser, and make sure of the circumstances in your transaction.

Contact us for more information (877) 596-1031

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