

Revenue Ruling 72-456

Examples illustrate the effect of brokerage commissions on realized gain and basis of property received in connection with exchanges of property to which section 1031 of the Code applies.

Advice has been requested concerning the proper treatment to be accorded brokerage commissions paid in connection with exchanges of properties that result in nontaxable or partially nontaxable exchanges under section 1031 of the Internal Revenue Code of 1954 in the situations described below.

Situation 1. A taxpayer exchanged his property, land held for productive use in trade or business or for investment, with an adjusted basis of \$12,000, for property of a like kind, to be held for productive use in trade or business or for investment, with a fair market value of \$20,000 and \$10,000 in cash. He paid a commission of \$2,000 to a real estate broker.

Situation 2. A taxpayer exchanged his property, land held for productive use in trade or business or for investment, with an adjusted basis of \$29,500, for property of a like kind, to be held for productive use in trade or business or for investment, with a fair market value of \$20,000 and \$10,000 in cash. He paid a commission of \$2,000 to a real estate broker.

Situation 3. A taxpayer exchanged his property, land held for productive use in trade or business or for investment, with an adjusted basis of \$10,000, for property of a like kind, to be held for productive use in trade or business or for investment, with a fair market value of \$20,000. He paid a commission of \$2,000 to a real estate broker.

Section 1031(a) of the Code provides, in part, that no gain or loss shall be recognized if property held for productive use in trade or business or for investment is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment.

Section 1031(b) of the Code provides, in part, that if an exchange would be within the provisions of section 1031(a) if it were not for the fact that the property received in exchange consists not only of property permitted by such provisions to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

Section 1031(c) of the Code provides, in part, that if an exchange would be within the provisions of section 1031(a) if it were not for the fact that the property received in exchange consists not only of property permitted by such provisions to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

Section 1.1031(d)-1(c) of the Income Tax Regulations provides, in part, that if, upon an

exchange of properties of the type described in section 1031 of the Code, the taxpayer received other property (not permitted to be received without the recognition of gain) and gain from the transaction was recognized as required under section 1031(b) of the Code, the basis of the property transferred by the taxpayer, decreased by the amount of any money received and increased by the amount of gain recognized, must be allocated to and is the basis of the properties (other than money) received on the exchange.

Section 1.1031(d)-2 of the regulations, example (2), indicates that money paid out in connection with an exchange under section 1031 of the Code is offset against money received in computing gain realized and gain recognized and is also added in determining the basis of the acquired property.

Accordingly, it is held that the three factual situations presented result in the following:

SITUATIONS	1	2	3
Received			
Land-F.M.V.	\$20,000.00	\$20,000.00	\$20,000.00
Cash	10,000.00	10,000.00	-0-
Total	\$30,000.00	\$30,000.00	\$20,000.00
Less			
Brokerage commission	2,000.00	2,000.00	2,000.00
Amount realized	\$28,000.00	\$28,000.00	
Given up:			
Land-basis	12,000.00	29,500.00	10,000.00
Realized gain(loss)	\$16,000.00	\$(1,500.00)	\$8,000.00
Recognized gain (lesser of realized gain or net cash received)	\$8,000.00	\$-0-	\$-0-
Basis			
Land given up-basis	\$12,000.00	\$29,000.00	\$10,000.00
Less cash received	(10,000.00)	(10,000.00)	-0-
Plus recognized gain	8,000.00	-0-	-0-
Plus brokerage commission	2,000.00	2,000.00	2,000.00
Basis of land received	\$12,000.00	\$21,500.00	\$12,000.00