

BOOT

Having nothing at all to do with footwear, “Boot” is a term which refers to the items of personal property and/or cash that is necessary to even out an exchange. Boot is property which is received in an exchange and that is *not* “like kind” as to other property acquired in an exchange transaction. Boot is defined as the “fair market value” of the non-qualified property received in an exchange.

While the receipt of boot will not disqualify the exchange, an Exchanger who receives boot in an exchange transaction generally recognizes gain to the extent of the value of the boot received. Some common examples of Boot are:

- Cash proceeds an Exchanger receives from the Qualified Intermediary during or after the exchange;
- Nonqualified property, such as stocks, bonds, notes or partnership interests;
- Proceeds taken from the exchange in the form of a note or contract for sale of the property. An Exchanger can utilize IRC §453 to recognize the gain (boot) of a seller carry-back note received in an exchange transaction under the *installment sale* rules;
- Relief from debt on the Relinquished Property caused by the assumption of a mortgage, trust deed, contract, or an agreement to pay other debt that is not replaced on the Replacement Property;
- Personal Property received in the exchange. Personal Property is never “like-kind” to real property; and
- Property that is intended for personal use and not for use by the Exchanger as either his/her investment or business use property.

To avoid the receipt of Boot the Exchanger should:

- Purchase “like-kind” Replacement Property of equal or greater net sales price than the Relinquished Property;
- Reinvest all of the net equity (exchange funds) from the sale of the Relinquished Property in the purchase of the Replacement Property; and
- Obtain equal or greater debt on the Replacement Property than was paid off, assumed, or taken subject to on the Relinquished Property. *Exception:* A reduction in debt on the Replacement Property can be offset with additional cash from the Exchanger, but increasing the debt on the Replacement Property cannot offset a reduction in the exchange equity, thereby resulting in excess exchange funds upon the completion of the exchange. Any excess exchange funds will be Boot and the capital gain tax will be recognized to the extent of the Boot received.

Brief Exchange Communications

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