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## ARE PROPERTY INTERESTS HELD BY LAND CONTRACT PURCHASERS “LIKE-KIND” TO A FEE?

— by Neil E. Harl*

Without much doubt, like-kind exchanges have become a popular way to dispose of interests in land and other assets. With substantial use of installment sale transactions in the disposition of farmland, some like-kind exchanges involve the rights of purchasers under installment land contracts. The question is whether a land contract purchaser’s interest in land is “like-kind” with a fee simple interest in land.

### “Like-kind” in the case of real estate

The rules as to what is “like-kind” have been less rigid in the case of real estate than with depreciable personal property. Thus, IRS has approved, as like-kind, a sale followed by a lease-back involving terms of 30 years or more, an exchange of a remainder interest in farmland for a remainder interest in farmland, an exchange of a remainder interest for a fee simple interest in real property, an exchange of a conservation easement in perpetuity for a fee simple interest in other farmland, an exchange of “mitigation credits” involving wetlands, and an exchange of a fee simple interest in realty for a leasehold interest of at least 30 years to run.

### Starker v. United States

With respect to an exchange of a land contract purchaser’s interest in realty for a fee simple interest, the Ninth Circuit Court of Appeals in *Starker v. United States* indicated that such an exchange was like-kind. In the facts of the portion of that case which is relevant here, one party to the exchange held purchaser’s rights under a sales agreement for a tract of land. One of the original transfereors held a life estate in the property and legal title would not pass until the expiration of that life estate. In the meantime, the contract purchasers were entitled to possession but were subject to various restrictions including a prohibition on removing improvements, a requirement that buildings and fences be maintained in good repair and a commitment that a substantial part of the purchase price had to be invested with a fixed return paid to the purchaser of the life interest (one of the sellers under the land contract). If any of these conditions failed, the sellers could elect to void the contract.

The court said despite these contingencies, the contract purchaser held what was “the equivalent of a fee interest for purposes of determining whether the properties exchanged are of a like-kind.” Under the terms of the deal, the contract purchaser “had at least the rights of a long-term lessee, plus an equitable fee subject to conditions precedent.” The Ninth Circuit Court of Appeals concluded that the purchaser’s rights under the facts of that case were equivalent to a fee simple interest for like-kind exchange purposes.

The obvious question is whether the unique conditions present in *Starker v. United States*...
States

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fee simple interest appears to be like-kind. The exchange of a contract purchaser's interest in land for a direct evidence in support of that conclusion. Nonetheless, concerned about that feature of the case although there is no simple interest. Presumably, the Congress was not greatly concerned about that feature of the case although there is no direct evidence in support of that conclusion. Nonetheless, the exchange of a contract purchaser's interest qualifies as "like-kind" to a fee simple interest. Congress did not address the matter of whether a land contract purchaser's interest could be forfeited for non-performance under the contract but that feature presumably was present in Starker v. United States.20

Although Congress addressed another feature of the Starker holding, namely the fact that the exchange did not have to be contemporaneous, indeed that the court approved a substantial delay in the acquisition of replacement property.21 Congress did not address the matter of whether a land contract purchaser's interest qualifies as "like-kind" to a fee simple interest. Presumably, the Congress was not greatly concerned about that feature of the case although there is no direct evidence in support of that conclusion. Nonetheless, the exchange of a contract purchaser's interest in land for a fee simple interest appears to be like-kind.

FOOTNOTES


3 See I.R.C. § 1031(a)(1).


8 Ltr. Rul. 9601046, Oct. 10, 1995 (perpetual conservation easement to Department of Interior).


11 602 F.2d 1341 (9th Cir. 1979).

12 Id.

13 Id.

14 Id.

15 Id.

16 Id.

17 Id.

18 602 F.2d 1341 (9th Cir. 1979).

19 Id.

20 Id.

21 See I.R.C. § 1031(a)(3) (establishing time limits on identifying replacement property and in receiving the replacement property).

CASES, REGULATIONS AND STATUTES
by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-ALM § 13.03.*

EXEMPTIONS.
FALSE SCHEDULES. The debtor made several false lists of estate property and exempt property on the bankruptcy schedules throughout the Chapter 7 case, including omission of property and transfer of property through the debtor’s business. The debtor had been denied a discharge because of the false schedules. The court held that the schedules became so unreliable that the debtor would also be denied all exemption claims. In re Park, 246 B.R. 837 (Bankr. E.D. Tex. 2000).

CHAPTER 12-ALM § 13.03[8].*

CONVERSION. The debtors operated a fish farm and filed for Chapter 12. One debtor was the heir of a parent who died shortly before the Chapter 12 petition. The debtor disclaimed any interest in the estate one day before filing the petition, resulting in the inheritance passing to the debtor’s children. The debtors failed to include several items of property on the bankruptcy schedules and had not filed amended schedules by the time of this decision. The court held that the Chapter 12 case was to be converted to Chapter 7 because the debtors attempted to defraud the creditors by concealing assets. The court chose conversion instead of dismissal because the debtors had made several preferential transfers which the Chapter 7 trustee could recover for the benefit of creditors. In re Kloubec, 247 B.R. 246 (Bankr. N.D. Iowa 2000).

FEDERAL TAX-ALM § 13.03[7].*

DISCHARGE. The debtor had filed a previous Chapter 13 case and the issue was whether the previous case tolled the three year period for purposes of Section 507(a)(8)(A)(i) and whether the tolled period included the six month provision in I.R.C. § 6503(h)(2). The court held that the length of the previous bankruptcy case plus six months was to be added to the three year period of Section 507(a)(8)(A)(i) to determine which taxes were dischargeable. In re Schultz, 2000-1 U.S. Tax Cas. (CCH) ¶ 50,510 (Bankr. D. N.H. 2000).