

▲ **1031 Exchange of Collectibles**

In mid-October, the Senate Finance Committee passed the Heartland, Habitat, Harvest and Horticulture Act of 2007. The bill contains three provisions that would modify IRC §1031, Like-Kind Exchanges (“LKEs”). The first provision would allow stock in certain mutual ditch, reservoir or irrigation companies to qualify for like-kind exchange treatment. The second provision would disallow LKEs of unimproved real estate when the owner is receiving agricultural program payments or Commodity Credit Corporation loans for improved real estate, unless the undeveloped land is permanently retired from farm program payments. The third provision is entirely new: it would disallow LKEs of collectibles.

Collectibles generally include works of art, antiques, gems, stamps, precious metals, coins, historical objects and, most recently, sports memorabilia. Congress has for a number of years looked with disfavor upon the tax-deferred exchange of such items. The argument here is that only the wealthy can afford to purchase such items and are, therefore, uniquely positioned to pay tax on any appreciation in value. While not generally a body blow to LKEs, this provision would be the first significant narrowing of Section 1031 in years. Interestingly, this provision is not specific to farm issues and suggests that Section 1031 is “in play”; further restrictions could be used to raise revenue for other priorities.

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of the husband’s federal estate tax return, including review of the divorce decree, the IRS took the position that the total value of the husband’s former interest in the cabin was to be included in the husband’s gross taxable estate under IRC §2036 because the husband had reserved the “legal right to use and enjoy” the cabin after terminating his ownership interest. If a party to a divorce decree desires to reserve rights in any property being transferred to the other spouse as part of the property settlement, you will want to consider the potential estate tax problems under §2036 for the reserving party.

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court held that information provided by 911 callers contained sufficient indicia of reliability to justify warrantless arrests of individuals the 911 callers identified as miscreants.

Prosecutors can rely upon these cases on the proposition that

911 calls meet the reliability standard for law-enforcement searches and seizures, particularly if the information is fairly detailed by eye-witness accounts, as in these two cases. Criminal defendants may try to counter these assertions in suppression motions by challenging the reliability of the callers if their information is not based upon first-hand knowledge, or hearsay, is not sufficiently specific, or perhaps if the callers are anonymous.

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▲ **911 Calls**

The courts are increasingly comfortable allowing statements made in 911 emergency calls to be used in support of criminal proceedings. As 911 calls gain more acceptance, they are being used with increasing regularity as a substitute for testimony by live witnesses in criminal prosecution, usually for domestic abuse or assault cases. See *State v. Wright*, 726 N.W.2d 464 (Minn. 2007) (use of 911 call, in absence of testimony by caller, did not violate Confrontation Clause, except for remarks made after suspect in custody). Another trend is use of 911 calls to support law-enforcement arrests. In *State v. Wright*, *supra* and *State v. Kuznia*, 2007 WL 2472560 (Minn. App. 2007) (unpublished), the appellate

▼ **Property Transfers & Estate Tax**

It is easy for a lawyer to overlook the potential estate tax impact of what seems to be a very little compromise in a divorce settlement. A divorcing couple with the assistance of their respective counsel had divided up their real estate holdings with the lake cabin being given entirely to the wife as part of her half of their combined assets. The husband demanded and

the wife agreed to give to the husband the occasional right to use the lake cabin, in exchange for which the husband promised to help maintain the property. The husband’s right to use the cabin was documented in the divorce decree. Shortly after the divorce was finalized, the husband died suddenly, having used the cabin several times. During an audit



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**CORRECTION**

Due to an error in editing, the “trap” captioned “Defamation” in the November, 2007, edition contained a typographical error. It referred to a higher standard of proof under the *New York Times* standard invoked in defamation cases when corporations or other business entities are sued “as defendants.” It should have stated that the elevated evidentiary standard applies when corporations or other business entities bring suit as “plaintiffs.” We regret any confusion this may have caused. Ed.