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## **Tax Court finds that vacation home held primarily for personal use not consistent with “held for investment” intent under Section 1031.**

Barry E. Moore et ux. v. Commissioner; T.C. Memo. 2007-134; No. 11002-03, May 30, 2007

Taxpayers purchased Lake Property A in 1988, in part due to appreciation potential of the property. Taxpayers’ family used the property for recreational purposes two or three weekends per month from mid-April to Labor Day each year, and would visit the property intermittently during the “off season” to perform maintenance and other such caretaking duties. Due to a relocation of Taxpayer’s primary residence farther away from the property, Taxpayers ceased using Lake Property A and allowed it to become “run down”.

In 2000, Taxpayers disposed of Lake Property A and acquired a 25% undivided interest in Lake Property B from an escrow agent (Taxpayers previously acquired the remaining 75% undivided interest in 1999; Note that although the court did not address this issue due to the fact that the Taxpayers were not deemed to have sold or acquired qualified property, the ruling mentioned that the IRS took the position that the escrow agent was actually an agent of the taxpayer, thus treating the property as if the Taxpayer’s already owned it, and therefore disqualifying the property from exchange qualification as well). Taxpayers’ family utilized Lake Property B in the same manner as Lake Property A, with even greater frequency throughout the year due to the properties closer proximity to Taxpayers’ primary residence. Taxpayers sought tax deferral under Section 1031, claiming both lake properties qualified as property held primarily for investment.

Under audit, the Service argued that the Taxpayers’ *primary* purpose in holding the properties should control any such “held for” determination, while Taxpayers argued that the holding requirement of §1031 is satisfied if investment is one of several purposes in holding the properties. In its analysis, the court agreed with the Service that the Taxpayers’ primary intent of ownership for both properties was for personal use, not investment. Specifically, the ruling pointed out the following:



- Taxpayers' primary use of the property was personal enjoyment and recreation
- Taxpayers' mere hope or expectation of appreciation cannot in and of itself establish an investment intent
- Taxpayers neither rented, nor attempted to rent the properties at any point
- Taxpayers failed to claim any tax deductions for maintenance expenses or depreciation connected with the properties
- Taxpayers treated all of their interest deductions for 1996-1999, and most of those deductions for 2000-2002 as home mortgage interest rather than investment interest
- Taxpayers' lack of upkeep of Lake Property A is inconsistent with an intent to protect and maximize an investment, and such upkeep was tied to Taxpayers' personal use of the property

**The practical application of Moore v. Commissioner is that it clarifies the previously scant case law that indicated, but that did not say so directly, that vacation homes and second homes primarily held for personal use do not qualify for exchange treatment. Further, any such properties that a taxpayer purports to hold primarily for investment purposes may find such investment intent compromised by significant personal use of the property.**