Real Estate and Tax Law: A Year in Review

James R. Paul
Carruthers & Roth, P.A.
(336)478-1150
jrp@crlaw.com

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Learning Objectives:

- Gain familiarity with the current "hot topic" real estate related tax issues, considerations, and strategies influencing and driving commercial real estate purchasers, sellers, and developers operating in the North Carolina market, including:
  - Section 1031 Exchanges
  - Section 1033 Involuntary Condemnation Exchanges
  - Foreign Investment in Real Property Tax Act Issues
- Understand the basic legal mechanics underlying the above issues, and the roles of attorneys and accountants in transactions involving these issues.
- Identify areas where attorneys and accountants can cooperate to add value for clients engaged in transactions involving these issues.

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Why Commercial Real Estate Issues?

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Corporate Growth in North Carolina:

- Apple (Research Triangle Park)
  - Purchased seven parcels located to the northeast of the intersection of Louis Stephens Drive and Little Drive in Research Triangle Park in late 2018 for the construction of first East Coast campus.
  - Total land acquisition: roughly 280 acres.
  - Total campus build cost (Estimated): $ 1 billion.
  - Jobs created: 3,000.
    - Average annual salary: $185,000.
  - Expected to bring an additional $1.5 billion into the North Carolina economy each year.
- Boom Supersonic (Piedmont Triad International Airport - Greensboro)
  - Acquired large parcel of land located just north of runway 23R at Piedmont International Airport for the construction of the Overture Superfactory.
  - Total land acquisition: Roughly 65 acres.
  - Total facility square footage: Roughly 400,000 square feet.
  - Jobs created: 1,750 by 2030, with a total of 2,400 created by 2032.
  - Expected to bring an additional $1.6 billion into the North Carolina economy each year.

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Slide 4

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Corporate Growth in North Carolina:

- VinFast (Chatham County – Triangle Innovation Point Megasite)
  - Purchased land earlier this year within Chatham County's Triangle Innovation Point Megasite for the construction of a manufacturing plant for electric cars and buses, production of electric vehicle batteries, and ancillary supplier production and assembly areas.
  - Total land acquisition: Roughly 2,000 acres.
  - Total project cost (Phase I, estimated): $ 2 billion.
  - Jobs created: 7,500.
  - Expected to bring more than $500 million into the North Carolina economy each year.
- Toyota (Greensboro - Randolph Megasite)
  - Purchased land in late 2021 within the Greensboro-Randolph Megasite for the construction of the new Toyota Battery Manufacturing, North Carolina plant.
  - Total land acquisition: 1,800 acres.
  - Total project cost (estimate, total): $5.6 billion.
  - Jobs created: 2,100.
  - Expected to bring approximately $500 million into the North Carolina economy each year.

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Future Growth in the North Carolina Commercial Real Estate Market is Likely:

- The potential for short to moderate term growth in the commercial real estate market in North Carolina is high:
  - North Carolina ranks highly among best states to do business in according to many metrics.
    - Ranked number 1 in CNBC's "America's Top States for Business 2022."
    - Ranked number 4 in Site Selection Magazine's ranking of states by business climate.
    - Ranked best Southeastern state for sustainability in rankings by Site Selection Magazine.

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Current State of the Triad Commercial Real Estate Market:

- Statistics from the third quarter of this year reflect positive commercial real estate growth trends in the triad.
  - Office:
    - Office vacancy rate predicted to recede over the course of the next year.
    - New leasing activity for office spaces is up 22.4% year over year.
    - Office rents increased 2.1% on average from the second quarter of 2022 to the third quarter of 2022.
      - Average office space rent currently $18.29 per square foot.
      - Rent projected to continue increasing over the next year.
  - Industrial:
    - 2,900 manufacturing, transportation, trade, and utilities jobs added over the past year.
    - Industrial leasing has increased by 15.8%.
    - Rents increased 23.2% year over year.
      - Rents for industrial spaces topped $5.00 per square foot for the first time.
      - Projected to continue increasing over the next year.

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Market Takeaways:

- North Carolina, and the Triad area, is actively attracting international corporations and companies willing to invest heavily in the development of commercial real estate.
- North Carolina continues to rank as one of the best states in the nation to do business in, poised to continue for the foreseeable future.
- Statistics show positive trends and growth in Triad commercial real estate market, likely to be sustained.

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Commercial Real Estate Taxation Issues:

What taxation related issues have our commercial real estate clients been navigating over the past year?

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Issues:

- Section 1031 Exchanges
- Section 1033 Involuntary Condemnations
- Foreign Investment in Real Property Tax Act
- State Level Present Use Value Taxation

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Section 1031 Exchanges:

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About Section 1031 Exchanges:

- Section 1031 exchanges are the most common commercial real estate related tax issue.
- Name derived from Title 26 of the United States Code, Section 1031.
- Mechanism that allows taxpayers to defer the taxable gain recognized upon the sale of property held by the taxpayer for "productive use in trade, business, or investment purposes," where that property or those properties (or rather, the funds from the sale of those properties) are "exchanged" for other, "like-kind" property.
  - Note: We will speak about application to real property only, taxpayers may also defer recognition of gain on certain transactions involving personal property.

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Legal Framework for Section 1031 Exchanges:

- 1) Property "exchanged" must be held for productive use in trade, business, or for investment purposes;
- 2) Property must be exchanged, rather than sold;
  - This means that there must be a reciprocal exchange of property, rather than the transfer of property solely for cash.
- 3) Property received in the "exchange" must be of "like-kind" to the relinquished property;
- 4) Property received in the "exchange" must be held for productive use in trade, business, or for investment purposes;
- 5) Neither the relinquished property nor the property received can fall within certain categories of property; and
- 6) Replacement property must be identified within forty-five (45) days of the date of transfer, and the closing must occur before the earlier of:
  - (a) the one hundred eightieth (180th) day after the date on which the taxpayer transfers title of the relinquished property; or
  - (b) the due date for the taxpayer's tax return for the taxable year in which the transfer of the relinquished property occurs.

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Property Relinquished "Held for Productive Use in Trade, Business, or for Investment Purposes":

- Property exchanged must be held for productive use in trade, business, or for investment: CE0
  - Refers to nature of the taxpayer's use of the property prior to the relinquishment:
    - "Held for…"
      - Difficult to define but suggests investment intent of taxpayer has element of continuity.
    - "Use in trade, business…"
      - Property used in trade is property that is used directly or incidentally in, or held for use incidental to, the taxpayer's trade or profession.
      - Not applicable to:
        - Property held as sock in trade or held for resale;
        - Inventory;
        - Raw materials;
        - Real estate held by dealers for sale to consumer.
    - "For investment purposes…"
      - Subjective, but generally encompasses the idea that property is primarily held for eventual disposition, with taxpayer's goal being the accretion of value over a longer ownership window.
        - Courts look to frequency and continuity of taxpayer activities, length of time property held, amount of development activity, and extent of the taxpayer's efforts to sell.

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Slide 14

CE0 WOAH, way too hard to read

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Property Must Be "Exchanged" Rather Than Sold:

- Property "exchanged" rather than "sold"…:
  - Reciprocal exchange of property for replacement property, rather than the sale of the property in exchange for a cash purchase price.
    - In practice, the simultaneous exchange of commercial property (concurrent exchange) is incredibly rare.
    - "Exchange" criteria generally met through use of a "qualified intermediary," who assumes the contract rights of the exchanging party.
      - Called a deferred exchange…enabled by rules adopted in 1991 as part of Title 26 of the Code of Federal Regulations, Section 1.1031(b)-2.
        - For all practical purposes, funds derived from the transaction are never actually in possession of the exchanging party.

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Exchanged Properties Must Be of "Like-Kind":

- The property received in the "exchange" must be of "like-kind" to relinquished property;
  - **BROAD**
  - Refers to nature and character of the properties exchanged, and not the quality.
    - "The distinction intended and made by the statute is the broad one between classes and characters of properties, for instance, between real and personal property. It was not intended to draw any distinction between parcels of real property, however dissimilar they may be in location, in attributes, and in capacities for profitable use…"
      - *Commissioner v. Crichton*, 122 F.2d 181
    - Generally distinguishment is made between real property *interests* and personal property.
      - Leaseholds of 30+ years considered sufficient…
  - Examples:
    - Improved realty exchanged for unimproved realty;
    - Rental property for a ranch;
    - City real estate for farmland;
    - Undivided tenants-in-common interest for fee simple ownership.

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Property Received "Held for Productive Use in Trade, Business, or for Investment Purposes":

- The property received in the "exchange" must be held for productive use in trade, business, or for investment purposes.
  - *See: Relinquished property.*

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Certain Categories of Property Not Eligible for Section 1031 Exchange:

- Neither the relinquished property nor the property received can be:
  - Stock in trade or other property held primarily for sale;
  - Stocks, bonds, or notes;
  - Other securities or evidences of indebtedness or interest;
  - Interests in partnerships;
  - Certificates of trust or other beneficial interests;
  - Choses in action.

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Timeframe for Section 1031 Exchanges:

- Replacement property must be identified within forty-five (45) days of the date on which the taxpayer transfers relinquished property, and the closing must occur before the earlier of:
  - (a) the one hundred eightieth (180th) day after the date on which the taxpayer transfers title of the relinquished property; or
  - (b) the due date for the taxpayer's tax return for the taxable year in which the transfer of the relinquished property occurs.

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The Role of the Attorney in Section 1031 Exchanges:

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- Determine whether property eligible for Section 1031 exchange.
- Co-ordinate, facilitate exchange by:
  - Selecting qualified intermediaries ;
  - Draft and negotiate terms of various Section 1031 closing documents;
  - Drafting agreements to facilitate assistance from the opposing party;
  - Drafting legal documentation to facilitate simultaneous exchange of real property.
- Determine whether proposed replacement property qualifies under Section 1031's "like-kind" test;
- Clarify, and develop use plans consistent with, "held for productive use in trade, business, or held for investment purposes" requirement;
- Facilitate completion of proposed exchanges by:
  - Bringing replacement property under contract;
  - Helping clients to conduct due diligence;
  - Advising clients throughout the due diligence and pre-closing process;
  - Completing the closing process; and
  - Assisting in post-closing activities.

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Slide 20

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Section 1033 Involuntary Conversions:

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About Section 1033 Involuntary Conversions:

- An increasing number of clients have been contacting our firm regarding options to defer taxable gain resulting from the involuntary condemnation of their commercial properties.
- Name derived from Title 26 of the United States Code, Section 1033.
- Allows taxpayers to defer taxable gain recognized upon the compulsory, or involuntary, condemnation of property where the condemnation award is reinvested into property which is either:
  - (a) “similar in service or use” to the condemned property; or
  - (b) of “like-kind” to the condemned property.

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Legal Framework for Section 1033 Involuntary Conversions:

- 1) Condemned property compulsorily or involuntarily converted, as a result of:
  - Partial or complete destruction of the property;
  - Theft; or
  - Seizure, requisition, condemnation, or the threat or imminence thereof;
- 2) Taxpayer elects to take advantage of Section 1033's tax deferral provisions;
- 3) Taxpayer identifies, and converts condemnation award funds into, real property that is either:
  - (a) "similar or related in use or service;" or
  - (b) of "like-kind" to the condemned property.
- 4) Conversion occurs within the statutorily mandated timeframe and is reported to the IRS.

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Compulsory or Involuntary Conversion:

- Condemned property compulsorily or involuntarily converted, as a result of:
  - Partial or complete destruction of the property.
    - Must be destruction of the property due to reasons that are beyond the control of the taxpayer.
    - Like the traditional concept of casualty loss, however there is no requirement of suddenness.
  - Theft; or
    - Damages recovered as result of civil prosecution of theft treated as "condemnation award funds" upon which gain can be recognized, and which may be reinvested and deferred.
  - Seizure, requisition, condemnation, or the threat or imminence thereof;
    - "Requisition" and "condemnation" largely synonymous, refer to acquisition of private property by governmental or quasi-governmental entities for public use, without the taxpayer/property owner's consent, but with the payment of compensation;
    - "Seizure" synonymous with "confiscation."
      - Government takes physical possession of property without prior court approval or payment of compensation.

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Section 1033 Election:

- Taxpayer must elect to take advantage of Section 1033;
  - Accomplished by excluding gain from the condemnation from the tax return filed for the first tax year in which that gain would be recognized.
    - Gain is not recognized until proceeds in excess of basis of property become available to the taxpayer.
  - Taxpayers must also file certain forms with the IRS reporting the involuntary conversion.
  - Can elect after return reporting gain filed, if the applicable statutory timeframe for replacement has not elapsed.
    - Done by purchasing replacement property, filing a claim for refund or credit for each year during which gain reported.
    - Refund claim need not be filed within the replacement period but must be filed within the normal refund period.
  - Elections may be revoked where:
    - 1) Converted property not replaced in required time period;
    - 2) Replacement property acquired at a lower cost than anticipated at time of election; or
    - 3) Where a decision is made not to replace.
  - When election revoked, amended tax return must be filed for each year in which the gain was realized, not previously reported.

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Conversion of Condemned Property into "Similar In Service or Use," or "Like-Kind" Property:

- Taxpayer identifies, and converts condemnation funds into, property that is either:
  - (a) "similar or related in use or service;" or
    - Owner-users: "Functional Use Test":
      - Similar physical characteristics.
      - Similar end uses.
      - Very strict.
    - Investor-owners: Relationship-based test:
      - Similar service or use to the taxpayer;
      - Business risks to the taxpayer derived from the ownership and use of each property of the same nature:
      - Similar demands on the taxpayer regarding the taxpayer's management of the property and provision of services related to the property.
  - (b) of "like-kind" to the condemned property;
    - Applies only where property was "held for productive use in trade, business, or for investment purposes."
      - Easy to satisfy.
      - Largely mirrors Section 1031's "like-kind" test.
  - Replacing taxpayer must be the same…subject to exception.

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Conversion Within Statutorily Mandated Timeframe:

- Conversion occurs within the statutorily mandated timeframe and is reported to the IRS.
  - Timeframe for replacement varies:
    - Under the "similar or related in service or use" test, the timeframe is 2 years.
    - Under the "like-kind" test, the timeframe for is 3 years.
  - Certain purchases made prior to recognition of gain may satisfy "replacement" criteria even where clock has not started.
  - The replacement "clock" begins at end of the 1st year in which taxable gain stemming from the condemnation is recognized.
    - Once funds in excess of basis become **available** to the taxpayer, even constructively, gain is "recognized."
    - Condemnation related lawsuits do not toll the replacement period.
  - Taxpayers can request extensions of the replacement period where there is "reasonable cause" for extension to be granted.

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The Role of the Attorney in a Section 1033 Involuntary Conversions:

- Determine whether condemned property qualifies as "involuntarily converted" property.
- Examine title to condemned property to ensure that property interests of the condemned have been properly extinguished.
- Collaborate with CPAs to determine the proper basis of condemned property.
- Work with CPAs to assist in allocation of condemnation award, especially where there are special damages concepts such as severance damages.
- Assist CPAs and client in determining whether to make a Section 1033 election; and assist and advise as to election timing.
- Assist in identification of replacement property, especially where the client wishes to reinvest in property other than traditional fee simple ownership.
  - Building improvements on land already owned by taxpayer.
  - Delaware Statutory trusts and "like-kind" replacement.

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The Role of the Attorney in a Section 1033 Involuntary Conversions:

- Assist clients in navigating highly fact specific "similar in service or use" test or making and analyzing arguments under the "like-kind" test.
- Determine when replacement period begins and ends.

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Foreign Investment in Real Property Tax Act:

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About the Foreign Investment In Real Property Tax Act (FIRPTA):

- After a slowdown in investment activity, likely connected to COVID-19, foreign investment in United States real property has increased dramatically over the past year.
  - According to statistics compiled by Deloitte, the second half of 2021 was the strongest half-year of foreign investment activity since records began in 2001, with most investment centered around industrial and multi-family properties.
- Found under Chapter 26 of the United States Code, Section 1445.
- Imposes requirement that certain percentage of sales proceeds be withheld in transactions involving the sale of United States real property interests held by foreign persons.
- FIRPTA considerations factor into every real estate transaction that we participate in.

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Legal Framework for the Foreign Investment in Real Property Tax Act (FIRPTA):

- General rule: "in the case of any disposition of a United States real property interest by a foreign person, the transferee shall be required to deduct and withhold a tax equal to fifteen percent (15%) of the amount realized on the disposition."
  - "Disposition…"
    - Sale;
    - Exchange;
    - Liquidation;
    - Redemption;
    - Gift; and
    - Other Transfers.
  - "United States Real Property Interest…"
    - Interest held, including as a creditor, in real property located in the United States or the U.S. Virgin Islands; and
    - Interests held in any domestic corporation that is the owner of United States real property interests as mentioned above.
  - "Foreign Persons…"
    - Non-resident alien individuals, or foreign corporations that have not made elections under Section 897(i) to be treated as a domestic corporation, foreign partnership, foreign trust, or foreign estate.

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FIRPTA Exemptions:

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- Exemptions:
  - Transferor furnishes a "non-foreign affidavit";
  - Non-publicly traded domestic corporations furnish affidavits that interests in corporation are not United States real property;
  - Transferee applies for and receives qualifying statement from the Secretary determining appropriate withholding amount;
  - Residences where the realized amount does not exceed $300,000; and
  - Stock regularly traded on established securities markets.

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Special FIRPTA Rules:

- Special rules relating to distributions by corporations, partnerships, trusts or estates:
  - In the case of certain dispositions by domestic partnerships, trusts, or estates where gain on sale is allocable to a foreign person who is a partner or beneficiary of such partnership, trust, or estate, or where the trust in question is owned by a foreign person, a withholding rate of 21% shall apply.
  - Where domestic corporations holding United States real property interests distribute property to foreign persons, the corporation will withhold a tax equal to 15% of the amount realized by the foreign shareholder.
  - Where a domestic or foreign partnership, trust, or estate disposes of United States real property, and funds are disbursed to a foreign person as beneficiary or partner under the partnership, trust or estate, a withholding rate of 15% applies.
  - Where distributions are made by qualified investment entities to nonresident aliens or foreign corporations, a 21% withholding rate will apply.
  - Note on the withholding party: Under some exceptions, the party who is required to withhold may vary. It is important to understand which statute you are proceeding under.

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Slide 33

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A Note on Liability:

- Section 1445 creates liability issues for agents, and parties designated as "substitutes," involved in transactions, particularly with respect to:
- (a) the actual withholding of funds; and
- (b) representations and disclosure requirements in connection with the transferor's status as a foreign or non-foreign entity.
  - Note that this liability extends to agents of the transferor and transferee alike. It also extends to qualified substitutes, a category that may include closing attorneys and other parties participating in the closing of the transaction.
  - Statute may create personal liability among these parties. This liability may be limited by statute.

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The Role of the Attorney in the FIRPTA Transaction:

- Determine whether the interest exchanged is a United States real property interest.
  - Especially where interest is held through a limited liability company or some other form of corporate entity.
- Determination as to whether party selling the real property interest is a foreign person.
  - Especially where the entity is not a clear-cut foreign entity, but where persons who own interests in the entity may themselves constitute foreign persons under the act.
- Examine different aspects of the transaction and the involved parties to determine whether the transaction implicates special withholding rates and rules.
- Assist in determining whether statute shifts withholding burden to a party other than the transferee.
- Provide guidance to the CPA on process and procedural questions regarding filing and completion of required forms, filing of withholding certificate applications, as well as filing and completion of proper tax return following the completion of the transaction.

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Limitation of Liability:

- Most important role that attorneys can play in a transaction involving the Foreign Investment in Real Property Act. CE0
  - Legal gray area surrounding transactions that can result in liability, not just for the parties involved in the transaction but also their agents, advisors and service providers. This can be largely solved through the application of contract law principals.
- Withholding Agreements:
  - Allow for creation and enforcement of order of operations.
  - Allow parties to set realistic expectations around the escrow, closing, and withholding process.
  - Require parties to proceed through various steps in the transaction in good faith, including requiring parties to pursue the issuance of withholding certificate in relation to the transaction.
  - Require communication between the parties so that critical information cannot be "lost in the void," or withheld in bad faith as a result of disparity in knowledge between the two parties.
  - Clarify the escrow process and the procedures related to that process.
  - Allocate responsibilities and liability among each of the various players in the transaction, at every stage.

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Present Use Value:

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About Present Use Value Taxation:

- North Carolina's Present Use Value taxation program is commonly used by commercial real estate developers purchasing undeveloped land; it enables them to defer the traditional taxation of the property at rates based on the appraised market value of the property until they sell the property, or until development commences.
- Laws enabling North Carolina's Present Use Value Taxation program can be found in Section 105-277 of the North Carolina General Statutes.
- State level deferred taxation program available to landowners that uses the value of the land in its current use as agricultural, horticultural, or forest land as the basis for real property tax. Land is valued at its farming or other present use value for tax purposes, as opposed to assessed value linked to market value.
- Administered on the county level.

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Legal Framework for North Carolina's Present Use Value Taxation Program:

- Property must fall under certain statutorily specified uses to take advantage of the program:
  - Agricultural;
  - Horticultural; and
  - Forestry.
- Additionally, four other requirements must generally be met:
  - Ownership;
  - Size;
  - Income*; and
  - Sound Management.

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Ownership – Individuals and Business Entities:

- Land qualifying for Present Use Valuation must be owned by certain qualifying owners:
  - Individuals:
    - Self-explanatory – property held in person's name, includes tenancy by the entirety
      - Parties retaining life estates in the property can qualify as "owners" for the purpose of Present Use Valuation
  - Business Entities:
    - Structurally, these entities must be:
      - Limited liability companies;
      - General partnerships;
      - Limited partnerships; or
      - Corporations.
    - Must also meet all of the following requirements:
      - Agriculture, horticulture, or forestry as principal business;
      - All members of the business entity must be individuals, either directly or indirectly;
      - All individual members must be actively engaged in the principal business of the entity, or related to an individual member that is actively engaged in the principal business; and
      - Business entity, and its members, cannot be publicly traded corporations.

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Ownership – Trusts:

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- Land qualifying for Present Use Valuation must be owned by certain qualifying owners:
  - Trusts:
    - Ordinary:
      - Trusts where the creator of the trust transfers property to a trustee, for the benefit of the beneficiary.
      - Must be created by an individual landowner, who transferred land into trust *res*.
      - All beneficiaries must be directly or indirectly related to individuals that are either the creator of the trust or relatives thereof.
    - Testamentary:
      - Trusts created under provisions of an individual's will.
      - Created by individual landowner, who transferred land to the trust *res*.
      - Land qualified for Present Use Valuation before transfer.
      - Creator had no living relatives at time of death.
      - Trust income used exclusively for scientific, educational, literary, cultural, charitable or religious purposes.

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Slide 42

CE0 Break up

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Ownership – Tenants-in-Common:

- Land qualifying for Present Use Valuation must be owned by certain qualifying owners:
  - Tenants-in-common:
    - Can trigger any combination of the aforementioned ownership rules.
    - Each tenant-in-common must be able to meet all ownership requirements individually.
- Note: Additional criteria related to the length of ownership and owner's relation to the property apply to each ownership category.

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Size:

- Depending on the use category that the property falls under, at least one tract of land must satisfy the following minimum acreage requirements:
  - Agriculture: 10 acres in actual commercial production of crops, plants, animals
  - Horticulture: 5 acres in actual commercial production of fruits, vegetables, or nursery and floral products
  - Forestry: 20 acres in actual commercial production of trees
- A tract is one contiguous area of land, made up of one or more tax parcels.

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Income:

- Agricultural or horticultural:
  - Must contain at least one tract which produced an average gross income of at least $1,000 for each of the 3 years prior to making the application, with such income coming from:
    - Sale of products procured from the land;
    - Government soil conservation or land retirement payments; and/or
    - "Tobacco buyout" payments.
- Forestland has no income requirement.

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Sound Management:

- For land falling into the agricultural and horticultural use categories, defined as:
  - A program of production,
  - Designed to obtain the greatest net return from the land,
  - Consistent with its conservation and long-term improvement,
  - Does not require written plan, and can be proven in a variety of ways.
- For land falling into the forestland use category:
  - Written plan detailing the short and long-term objectives of the landowner;
  - Includes map or aerial photograph delineating each stand referenced in the plan;
  - Includes a detailed description or inventory of each stand, together with specific recommendations for each stand;
  - Includes the dates and methods for interim harvest and regeneration;
  - Includes a plan for regeneration in each stand after final harvest.

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Role of the Attorney in Transactions Involving Present Use Taxation:

- Work with CPA and client to determine whether present use value-based tax deferral is a good solution for the client.
- Assist CPAs and client in determination of whether client's property qualifies for present use value-based tax deferral.
  - Especially as relates to satisfaction of ownership criteria, including determination of whether "principal business" criteria is met, and whether parties are "actively engaged" in the business of agriculture, horticulture, or forestry.
- Work with client and CPA to obtain sound management plan for forestry uses, as well as assist in procurement of sound management plans for agricultural and horticultural uses.
- Assist CPA in completion of application for present use value program, including assistance in re-enrollment of newly acquired properties already enrolled in the present use value tax deferral program and assistance in enrollment of multiple (typically non-contiguous) properties into the program.
- Assist in issues relating to payment of taxes deferred under present use valuation (rollback taxes).

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Takeaways:

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Takeaways:

- The North Carolina commercial real estate market ha grown drastically over the past several years and is positioned to continue growing.
- Commercial real estate investors, owners, and developers are looking for ways to take advantage of the tax code to defer taxation, with deferral under Sections 1031 and 1033 remaining arguably the most popular vehicles for deferral.
- As foreign investment in United States real property interests continues to grow, the number of transactions triggering the provisions of FIRPTA are likely to grow as well.
- State programs for tax deferral are often overlooked but can serve as valuable tools in the arsenal of the commercial real estate investor or developer.
- Attorneys and CPAs can work together to provide value to clients in many ways, and CPAs can turn to attorneys for assistance in navigating the often challenging and fact specific issues implicated by popular real estate taxation mechanisms.

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Carruthers & Roth, PA
Attorneys at Law

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Real Estate and Tax Law: A Year in Review

James R. Paul
Carruthers & Roth, P.A.
(336)478-1150
jrp@crlaw.com

C|R
Carruthers & Roth, PA
Attorneys at Law

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