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NY ALJ OKs Like-Kind Exchange On Investors' Same-Day Sale

By [Paul Williams](#) · 2025-06-20 17:43:27 -0400 · [Listen to article](#)

Two New York residents qualify for a like-kind exchange deferral of gains they received from selling an apartment building on the same day they obtained its title from a partnership they were invested in, a New York administrative law judge said in a determination released Friday.



A New York administrative law judge rejected the state Division of Taxation's argument that an apartment building on Central Park West needed to be held by its temporary owners for more than one day in order for them to qualify for a like-kind exchange deferral of gains. (AP Photo/Richard Drew)

The residents' use of what is known as a drop and swap transaction, in which the partnership distributed the Manhattan apartment building to them as tenants in common before they sold it and reinvested the profits in other properties, was valid, Judge Barbara J. Russo [determined](#). Judge Russo said the transaction met the requirements for a like-kind exchange under Internal Revenue Code [Section 1031](#) , negating combined assessments of nearly \$4 million in New York state and New York City income taxes against the individuals for 2016 and 2017.

New York's Division of Taxation argued that the individuals, Benjamin Hadar and Ruth Shomron, needed to hold the investment property for at least a couple of months before selling it for the transaction to qualify as a like-kind

exchange, according to the determination. But Judge Russo said the tax agency was attempting to apply "a duration requirement that does not exist" in the federal law's plain language.

"The division has cited no authority for the proposition that title to the property must be held for more than one day, or for any specific time period," Judge Russo said, noting that federal courts have rejected similar arguments.

"Furthermore, merely because they held the [apartment building] momentarily, with the intent to exchange it for like-kind property, does not disqualify the transaction from the nonrecognition provisions" in Section 1031, Judge Russo said.

The apartment building was on Central Park West and had about 125 units that were mostly used for student housing, according to the determination. The partnership's predecessor purchased the property for \$975,000 in 1982. The partners at issue in the case, Hadar and Shomron, and a third partner that wasn't a party to the dispute, sold it for \$65 million in 2016, the determination said.

Hadar and Shomron separately sought other like-kind investment properties that they could use the gain from the sale to purchase, according to the determination. Judge Russo said the bulk of their shares of the proceeds from the property's sale weren't sent to the individuals but were instead wired to intermediaries that they used to execute the exchanges. Shomron reported and recognized \$5 million from the sale on her tax returns, and that amount wasn't at issue in the case, Judge Russo said.

Elizabeth Pascal of [Hodgson Russ LLP](#), who represented the residents, said it was significant that the decision hewed closely to federal precedent on Section 1031. She said the ruling is meaningful for partners in a partnership who "want to go their own way and reinvest in different properties" via a drop and swap after investing in a property for a long time.

"This decision confirms that the drop and swap, if done properly, adheres to Section 1031 regardless if it is done on the same day of the sale," Pascal said. She added that in her view, "New York aggressively audits these cases and is trying to make new law" despite the federal court rulings.

"This was a great win for the taxpayers and for New Yorkers who want to use Section 1031 for the purpose it was intended — to continue their investment in real property," she said.

A department spokesperson declined to comment.

Another resident, Rachel Hadar, was listed a party to the case only because she filed a joint return with Benjamin Hadar, according to a footnote in the determination.

The residents are represented by Elizabeth Pascal and Open Weaver Banks of Hodgson Russ LLP.

The New York Division of Taxation is represented by its own Amanda Hiller and Linda Jordan.

The cases are *In the Matter of Benjamin Hadar and Rachel Hadar* and *In the Matter of Ruth Shomron*, case numbers 850122 and 850123, in the New York State Division of Tax Appeals.

--Editing by Neil Cohen.