DELAWARE STATUTORY TRUST ("DST")

"A 1031 EXCHANGE REPLACEMENT PROPERTY ALTERNATIVE"

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Honey, who shrunk the inventory? When an investor sells investment property and would like to utilize IRC Section 1031 to defer the tax on that sale, the investor may find it challenging in today's market to locate a suitable replacement property. One possible solution for certain investors, particularly "accredited investors" (high net worth individuals and certain entities, as defined in Regulation D of the Securities Act of 1933) is to acquire an interest in a Delaware Statutory Trust ("**DST**") as replacement property to complete the exchange. A DST is a type of trust formed under Delaware law. Provided that the DST's governing documents conform to the requirements of Revenue Ruling 2004-86 (See: Revenue Ruling 2004-86), a DST investor's ownership interest in the DST is treated as a fractional interest in the property owned by the DST. Consequently, if the DST owns like-kind replacement property, an exchanger can acquire a fractional interest in the DST to complete the tax deferred exchange.

An ownership interest in a DST, sometimes called a "beneficial interest" or "DST units" is an indirect way of owning real estate for deferral income tax purposes. This can be appealing to investors who are interested in acquiring a managed real estate investment. The trustee of the DST initially purchases the property and holds title to the property. A sponsor structures the investment and arranges for the issuance of beneficial interests in the DST. Although interests in the DST are treated as securities under federal securities laws, they are treated as ownership of real estate under Section 1031. The sponsor generally arranges the bank financing for the purchase of the property, and coordinates the property management. In order to comply with applicable securities laws, the sponsor will generally provide a written document called a Private Placement Memorandum ("**PPM**") to the investor. The PPM provides information about the property, area demographics, tenants and leases, financial projections, risks of the investment along with additional information about the sponsor, and other disclosures.

An advantage of DST ownership over Tenant-in-Common ("**TIC**") ownership is that a DST is not limited to 35 investors. (See: Revenue Procedure 2002-22). The ability to spread the cost of the real estate among more investors can allow investors with smaller minimum investment amounts to exchange into a DST. Many DST sponsors also have the flexibility to match the amount to be invested into the DST by exchange investors with the net amount received for the relinquished property, so those investors desiring full tax deferral can meet the necessary 1031 exchange requirements. For more information, please see the link discussing Requirements for Full Tax Deferral.

WHEN TO CONSIDER A DST?

- When the investor is interested in passive ownership of high grade commercial property, but the investor lacks the financial wherewithal to purchase the property entirely on their own.
- When the investor wants a pre-packaged replacement property where the financing is in place and the sponsor has already performed due diligence.
- As a reliable backup property on the list of identified properties in the event the primary identified property does not work out, or they have not used all of the proceeds from the relinquished property and they wish to reinvest those funds to achieve full tax deferral.

To learn more about DSTs and the differences between DSTs and other fractional ownership structures such as TIC ownership, click on Delaware Statutory Trusts versus TIC Ownership. For more information about DSTs, visit the Real Estate Investment and Securities Association ("REISA") website at www.reisa.org.