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## SHOULD A HUSBAND & WIFE PLACE RENTAL PROPERTIES INTO AN LLC?

By Victor Sy, CPA, MBA

### Background

A Limited Liability Company is referred to as “LLC.” A husband and wife can form an LLC for their real estate properties. You can choose the type of entity for tax purposes by “checking the box” for either partnership, corporation, or disregarded entity. A formal [partnership](#) has to file a separate partnership tax return. Of course, you wouldn’t dare place real estate inside a [corporation](#). A creditor can seize your shares of stock and reach your apartment by dissolving the corporation. A good choice is to [disregard](#) the LLC and include transactions in your own personal income tax return. This is what we mean by “disregarded” – it’s ignored for tax purposes. Legally, it’s still an LLC and will remain an LLC. You just don’t have to file any separate federal tax form for it.

### Should You Use an LLC to Own Your Rental Property?

If [liability protection](#), [tax simplification](#), and [gift tax planning](#) are important to you, by all means, consider it. LLC is recommended especially if you have substantial equity in your buildings. Real estate investors are concerned about [exposure to liabilities](#) that tag along with rental properties. This can range from personal injury claims when tenants slip and fall on the sidewalk to serious mold and asbestos problems. Setting up an [LLC to own real estate addresses the liability exposure problem](#). ☺ It does so without adding tax complexity, since no additional federal tax forms are required. It’s also an ideal gift-giving technique by making it easier to transfer properties to your beneficiaries.

### How Do You Report Disregarded Activity in Your Income Tax?

If your LLC operates rental real estate, report your [rental activity in your personal Schedule E](#). Report any [business activity in Schedule C](#), as if the business is a sole proprietorship. No additional federal tax forms need be filed. California LLCs have only to file Form 568.

### Can LLC Avail Of 1031 Tax-deferred Exchange?

[Yes](#), of course. Here is how it works: simply treat the LLC exchange as if it were [personally](#) yours. Report the exchange in your personal income tax returns. The relinquished property given up and the replacement property received in the exchange can be held within the liability-limiting confines of the LLC. Even the IRS confirms that LLC can avail of this taxpayer-friendly exchange.

What if the rental given up is in your personal name and the property received is deeded to your LLC? Will the transaction qualify for a 1031 tax-deferred exchange? [Yes](#), indeed. The exchange qualifies for tax-deferred treatment because both the relinquished and replacement properties will be considered [owned by you](#) for income tax purposes.

### What About Property Tax Reassessments?

A word of caution: Be wary of property tax reassessments. It’s not fun to receive [supplemental](#) bills for *mas dinero*. It’s a pain to go to appeals. [Solution](#): Consider transferring the property to your [personal name first](#), and then move it to your LLC later. Good day!