

1031 DROP AND SWAP: IS BREAKING UP HARD TO DO?

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IRC § 1031 Like-Kind Exchange

Deferred Exchange

Same Taxpayer Rule

“Assets Held for Productive Use In Trade or Business”



What are “like-kind” assets?

Limited Liability Companies and Real Estate Investments

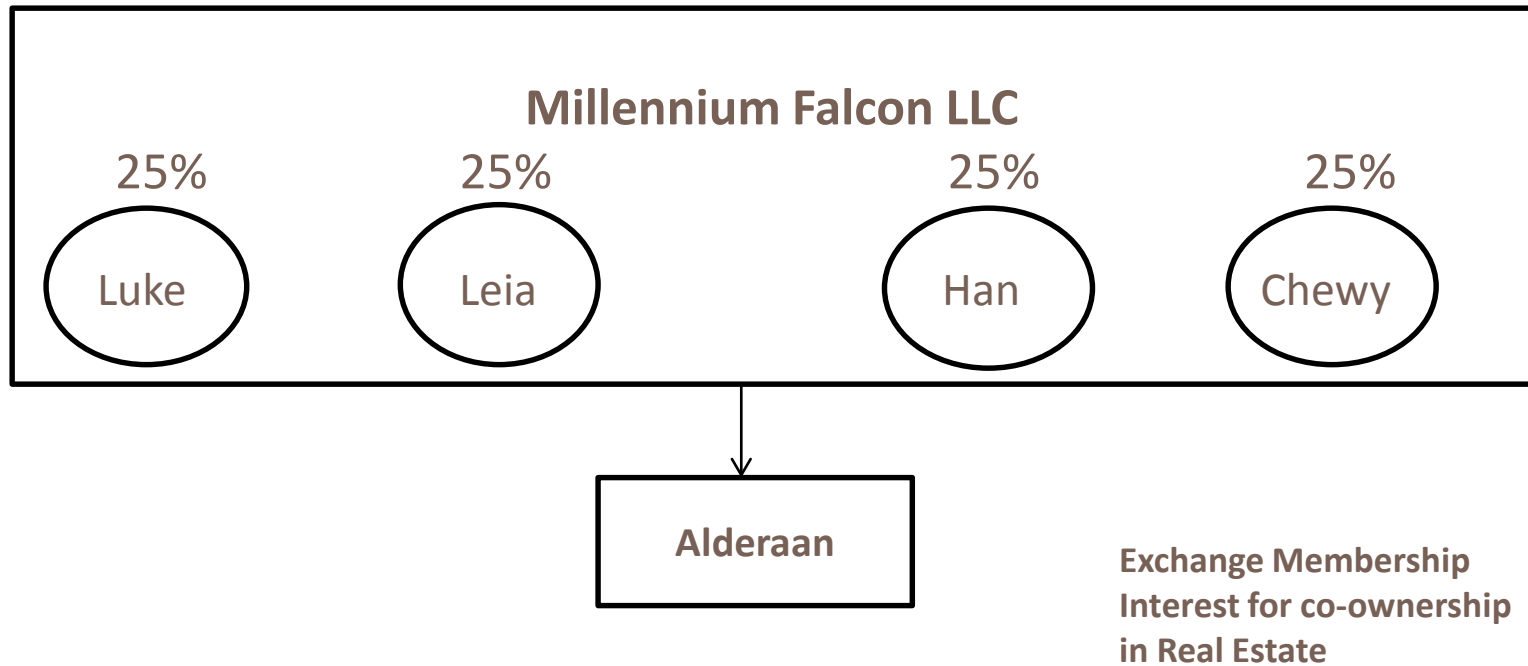
- Asset protection and limited liability
- Pass-through tax treatment
- Ease of administration

What Do You Do When Partners Want To Go In Separate Directions?

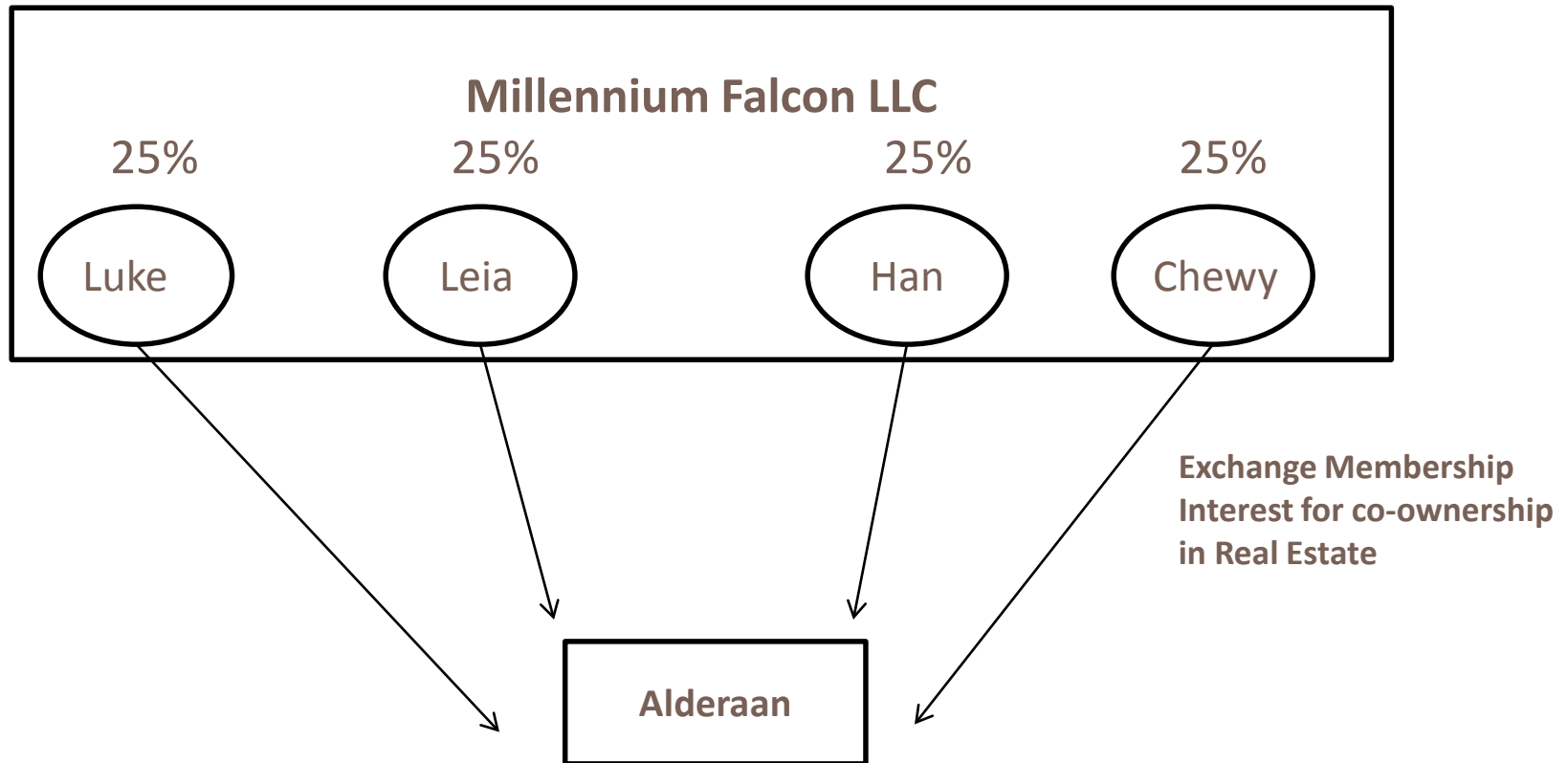
The Drop and Swap

The Drop

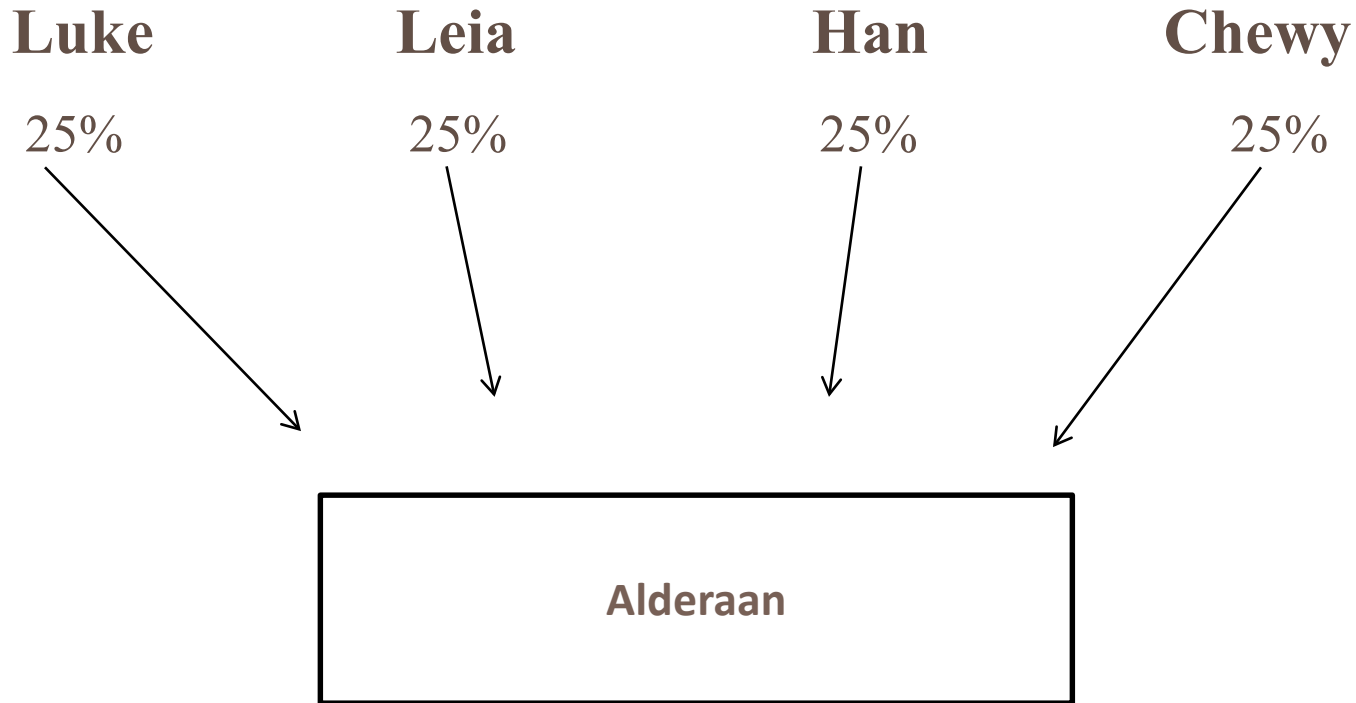
The Drop



The Drop



Tenants In Common

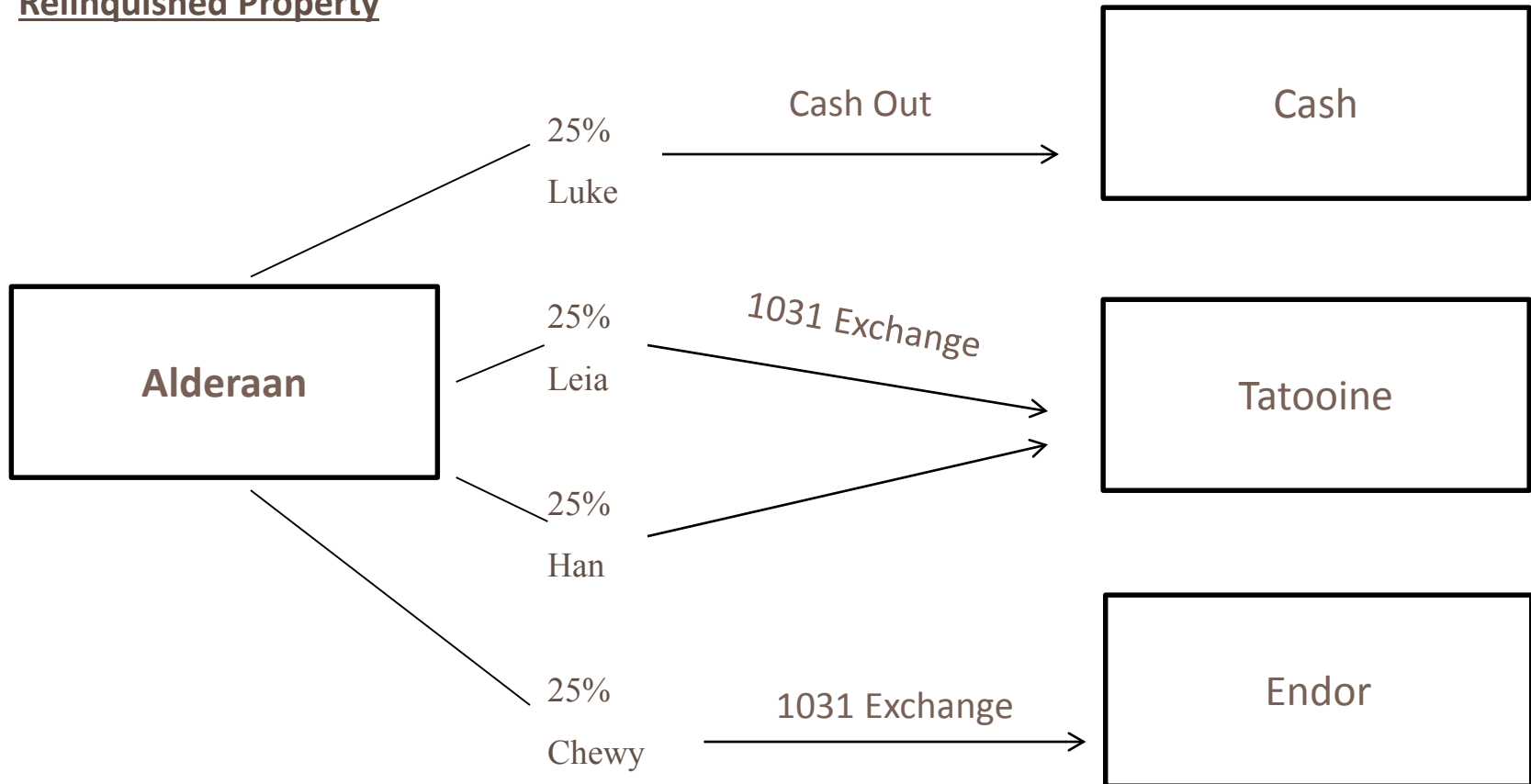


Four Fun Facts About Tenants In Common

1. Presumed form of ownership in Michigan.
2. No Right of Survivorship
3. Interest may be conveyed or encumbered separate from other owners
4. If percentages are not indicated on conveyance, they are presumed to be equal

The Swap

Relinquished Property



IRS Giving Drop and Swaps Greater Scrutiny



“HELD FOR” REQUIREMENT

Revenue Ruling 75-292
VS.
Magneson

U - Pick

1. Next Tax Year
2. 12 Months
3. One year and a day

IRS Claims Partnership Continues

REV PROC 2002-22

1. 35 co-owners max
2. Cannot hold themselves out as “partners”, “shareholder” or “members”
3. Unanimous consent required to lease or sell entire property
4. Each owner may sell or encumber that owner’s individual interest
5. Profits and losses must be shared according to % interest

Step Transaction

Additional Precautions

1. Bank Accounts, Leases
2. Section 761(a) election

Other Considerations



Real Estate Transfer Taxes

Environmental Issues

Uncapping of Real Estate Taxes

Loan Covenants

Replacement Property Basis

Consequences of Failed 1031 Exchange

THANK YOU!