



Working Interest Ownership vs. Passive Real Estate vs. Securities

A Decision-Stage Comparison Guide to Ownership Structure, Tax Treatment, and Capital Deployment for Exiting and Post-Exit Founders

[Explore Your Options](#)

Introduction

A liquidity event changes the math on everything. The skill set that built enterprise value, operating leverage, customer acquisition, margin discipline, is not the same skill set required to redeploy eight or nine figures of proceeds in a way that preserves what was built. Exiting founders, active CEOs planning ahead of a transaction, and PE-backed operators sitting on recapitalization proceeds all arrive at the same fork in the road within months of the event: where does the capital go, and how much of it does the IRS keep.

This guide is written for that decision point. It compares three structurally distinct ways exiting operators deploy post-transaction capital: entrepreneurial joint venture working interest ownership in producing oil and gas assets, passive real estate positions (syndications, limited partnerships, and Delaware Statutory Trusts), and public securities (equities, bonds, and index funds). The comparison is built around the criteria that matter most to someone who just spent years controlling an operating business and does not intend to trade that discipline for a structure they cannot evaluate: ownership rights, participation level, governance and control, liquidity, tax treatment, risk exposure, and administrative complexity.

 Nothing here is tax, legal, or investment advice, and nothing here is an offer. Tax treatment depends on individual circumstances, the specific structure of the capital contribution, and applicable law, and should always be confirmed with a qualified CPA or tax attorney before any capital is deployed.

What Is Compared

Three structurally distinct capital deployment paths are evaluated side by side. Each represents a fundamentally different relationship between the capital holder and the underlying asset.



Entrepreneurial JV Working Interest Ownership

A direct ownership position in the operations of a producing oil and gas well, typically held through a general partnership structure or an entity that does not limit the owner's liability. The owner holds a working interest, a share of production and a proportional share of operating and development costs, and participates in the business as a joint venture partner rather than as a passive capital source.



Passive Real Estate

Limited partner or beneficial interests in real property held through syndications, real estate limited partnerships, or Delaware Statutory Trusts (often used in 1031 exchange contexts). The owner contributes capital and receives allocated income and depreciation but has no operating authority and typically no voting or management rights.



Public Securities

Equities, corporate or municipal bonds, and pooled vehicles such as mutual funds and ETFs traded on public exchanges or held through brokerage and retirement accounts. Ownership is a claim on a company's or issuer's performance, not on a specific physical asset, and the owner has no operational involvement whatsoever.

Evaluation Criteria

Exiting operators evaluating where to deploy capital should weigh each option against seven factors:

1	Ownership What is actually owned: an operating interest in a real asset, a passive capital claim, or a traded security.
2	Participation How involved the capital holder is permitted to be in the underlying business or asset.
3	Governance & Control Who makes operating, capital, and disposition decisions.
4	Liquidity How quickly and at what cost the position can be converted to cash.
5	Tax Treatment Whether the structure's tax benefit depends on the owner's income level, hours of participation, or simply the legal classification of the activity itself.
6	Risk Exposure The nature of what can go wrong and how it is typically mitigated.
7	Complexity The ongoing administrative, reporting, and advisor-coordination burden the structure places on the owner.

Option A: Entrepreneurial JV Working Interest Ownership

A working interest is a real-property interest in the minerals and the well bore, not a security and not a passive capital placement. Under Treasury Regulation 1.612-4(a), the "operator" is defined as one who holds a working or operating interest, either as a fee owner or under a lease or other contract granting operating rights [1]. That operator classification is what allows intangible drilling costs, the labor, chemicals, drilling fluids, and other costs with no salvage value, to be treated under IRC Section 263(c) as currently deductible rather than capitalized [2].

The more consequential mechanism for an exiting operator, however, is IRC Section 469(c)(3)(A). The statute excludes "any working interest in any oil or gas property which the taxpayer holds directly or through an entity which does not limit the liability of the taxpayer" from the definition of a passive activity [3]. That exclusion matters because it means the working interest owner's ability to offset active income is tied to the classification of the activity itself, not to an hours test, not to a material participation requirement, and not to an income phase-out. A general partnership or unlimited-liability holding structure preserves that exclusion; an LLC or LP structure that caps liability forfeits it and reverts to passive treatment. This is the structural line every exiting operator and their CPA should confirm before capital moves.

Governance in this model runs through a joint operating agreement. The active JV member has defined information rights, cost-approval thresholds, and participation in major operating decisions, a structure more familiar to a founder who has sat on the other side of a board table than a typical capital-placement product. Capital contributions fund specific, identifiable operating assets, producing wells in named counties, with monthly operating reports rather than quarterly fund-level summaries.

IRC Section 611 and Section 613A also permit percentage depletion at a 15 percent statutory rate for independent producers and royalty owners on qualifying production, a recurring deduction layered on top of the upfront IDC treatment [4]. Actual tax outcomes depend on the taxpayer's basis, at-risk amount under IRC Section 465, and the taxpayer's broader income picture, and should be modeled individually with a tax professional rather than assumed from general statutory language.

IRC 469(c)(3)(A) Classification-based exclusion from passive activity — no hours test, no income phase-out	IRC 263(c) Intangible drilling costs currently deductible rather than capitalized	IRC 611 / 613A 15% statutory percentage depletion for independent producers on qualifying production
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Option B: Passive Real Estate

Real estate held through a syndication, limited partnership, or Delaware Statutory Trust is a familiar asset class to many exiting operators, particularly those who already hold commercial or investment property. The core distinction from working interest ownership is that the exiting operator becomes a limited partner: capital is contributed, depreciation and income are allocated proportionally, but operating authority sits entirely with the general partner or sponsor.

The tax benefit in this structure is real but is gated by the owner's participation level and income, not solely by the legal classification of the activity. The \$25,000 special allowance for active participation in rental real estate phases out at 50 cents per dollar of modified adjusted gross income above \$100,000 and is fully eliminated at \$150,000 MAGI, per IRS Publication 925 [5]. Passive LP interests in syndications typically do not even qualify for active participation treatment, meaning passive losses can only offset passive income unless the owner separately qualifies as a real estate professional under IRC Section 469(c)(7), a test requiring more than 750 hours of personal service annually and more than half of the owner's total personal service time in real property trades [6]. For a founder still running a company, consulting post-exit, or sitting on an earnout, that hours test is rarely achievable.

Depreciation is a genuine benefit of real estate ownership, but it is recaptured on sale. Unrecaptured Section 1250 gain, the portion of gain attributable to depreciation taken, is taxed at a federal rate capped at 25 percent, materially higher than the 20 percent long-term capital gains ceiling [7]. Cap rate compression has also been muted entering 2026: CBRE's H1 2026 U.S. Cap Rate Survey places core multifamily and industrial cap rates near 5.2 percent, retail between 6.4 and 6.9 percent, office near 7.4 percent, and hospitality near 8.5 percent, with only 5 to 15 basis points of compression expected across the year, meaning returns are currently being driven by income rather than appreciation [8].

\$25K Allowance Phase-Out

Begins at \$100,000 MAGI, fully eliminated at \$150,000 MAGI — a hard ceiling for high-income exiting operators

750-Hour Hours Test

Real estate professional status requires 750+ hours annually and majority of personal service time in real property — rarely achievable post-exit

25% Depreciation Recapture

Unrecaptured Section 1250 gain taxed at up to 25% federal rate on sale — higher than the 20% long-term capital gains ceiling

Option C: Public Securities

Public securities, equities, bonds, and pooled index products, remain the default destination for post-transaction capital largely because of familiarity and same-day liquidity. The exiting operator owns a claim on a company's future earnings or an issuer's promise to repay, not a specific, inspectable asset. There is no governance role, no operating visibility beyond quarterly filings, and no mechanism to influence outcomes.

Tax treatment depends heavily on structure and holding period. Dividends from a C-corporation have already been taxed once at the 21 percent corporate rate before being distributed and taxed again at the shareholder level, 0, 15, or 20 percent for qualified dividends plus the 3.8 percent Net Investment Income Tax, for an effective rate that can reach 23.8 percent on qualified dividends and considerably higher on non-qualified distributions, a double-taxation structure with no analog in direct working interest ownership [9]. Exempt securities offerings under Regulation D Rule 506(c) are also generally restricted to accredited investors as defined under SEC Rule 501 of Regulation D, a net worth or income threshold that does not govern working interest participation [10].

The S&P 500 has returned approximately 10 percent annually on average since 1957, a long-run benchmark many operators use as a baseline [11]. But that average increasingly reflects concentration risk rather than diversification: RBC Wealth Management's "Great Narrowing" analysis found the ten largest S&P 500 names represented approximately 41 percent of total index weight at the end of 2025, roughly double the 19 percent concentration a decade earlier [12]. An exiting operator who just spent years concentrated in one business may be surprised how concentrated their "diversified" index exposure has become.

Double Taxation Reality

21% corporate rate + up to 20% qualified dividend rate + 3.8% NIIT = effective rate reaching 23.8% on qualified dividends. No analog exists in direct working interest ownership.

Concentration Risk Warning

The top 10 S&P 500 names represented ~41% of total index weight at end of 2025 — roughly double the 19% concentration a decade earlier. "Diversified" index exposure may be less diversified than it appears.

Side-by-Side Comparison

Category	Working Interest Ownership	Passive Real Estate	Public Securities
Ownership	Direct operating interest in a real, identifiable producing asset	Limited partner or beneficial interest in real property, no title in the owner's name	Claim on a company's or issuer's performance, no physical asset
Participation	Active JV member with joint operating agreement rights	Passive capital contributor, no operating role	None, fully passive, no operational visibility
Governance / Control	Cost-approval thresholds, information rights, operator accountability	Decisions held by general partner or sponsor	No shareholder control over day-to-day operations
Liquidity	Multi-year hold tied to well life and reserve production, limited secondary market	Multi-year hold common, syndication/DST exits depend on sponsor timeline	Same-day liquidity on exchange-traded positions
Tax Treatment	Classification-based exclusion from passive activity under 469(c)(3)(A); IDC treatment under 263(c); percentage depletion under 611/613A	Participation and income-gated; \$25,000 allowance phases out at \$100,000–\$150,000 MAGI; depreciation recapture at up to 25% on sale	Corporate-level tax then shareholder-level tax on distributions; capital gains treatment on sale
Risk	Commodity price, well performance, and operator execution risk; capital contribution can be lost	Market, interest rate, sponsor, and property-level operating risk	Market volatility, concentration risk, issuer credit risk
Complexity	Joint operating agreement, K-1 reporting, AFE and cost-call administration	Sponsor-dependent reporting, K-1s, limited investor visibility	Brokerage statements, 1099s, minimal ongoing administration

Advantages, Limitations & Best-Fit Scenarios

Advantages & Limitations by Structure

Working Interest Ownership

Advantage: The tax benefit attaches to how the activity is classified, not to the owner's hours or income level — precisely what a time-constrained exiting operator needs. The owner also retains governance visibility into a tangible, inspectable asset.

Limitation: The position is illiquid for the life of the well, concentrated in commodity and operator-execution risk, and requires the liability-exposed holding structure (general partnership or similar) to preserve the 469(c)(3)(A) exclusion — a structure that must be set up correctly from the outset.

Passive Real Estate

Advantage: Familiarity and a tangible underlying asset many operators already understand from owning commercial property.

Limitation: The primary tax benefits are gated by income phase-outs or an hours test that is difficult for an active or recently active operator to clear, and depreciation recapture claws back a meaningful share of the benefit on exit.

Public Securities

Advantage: Unmatched liquidity and minimal administrative burden.

Limitation: Double taxation at the entity and shareholder level for corporate distributions, rising index concentration that undercuts the diversification thesis, and no tax mechanism tied to the exiting operator's active income at all.

Best-Fit Scenarios

Working interest ownership tends to fit exiting operators who:

- Have active income or recent distributions they want to offset in the same tax year
- Are comfortable with a multi-year hold in exchange for governance visibility into a real operating asset
- Want a structure where the tax outcome does not depend on clearing an hours threshold while running or winding down a business

Passive real estate tends to fit operators who:

- Already have real estate expertise or a 1031 exchange in motion
- Have the bandwidth to pursue real estate professional status
- Prioritize a familiar asset class over governance involvement

Public securities tend to fit the portion of a portfolio that:

- Requires near-term liquidity, rebalancing flexibility, or exposure uncorrelated to direct asset ownership
- Functions best as one allocation sleeve rather than the sole destination for exit proceeds

Most exiting operators evaluating this decision are not choosing one option exclusively. They are deciding how much of the current year's active income or distribution needs a classification-based offset now, versus how much capital belongs in liquid or professionally managed passive sleeves for the long term.

Decision Guidance & Key Questions

Four questions tend to clarify the allocation decision for exiting and post-exit founders:

- 1

Is there active income or a recent distribution in the current tax year that needs an offset tied to the classification of the activity, not to hours worked or income thresholds?

If yes, working interest ownership under a liability-exposed holding structure is the only one of the three options engineered around that exact mechanism.
- 2

How much governance involvement is wanted versus how much is simply tolerated?

An operator used to running a business often values operating visibility more than a pure capital placement, even a passive one, can offer.
- 3

What is the realistic liquidity need over the next three to five years?

Capital that may be needed sooner belongs in public securities regardless of the tax profile of the other two options.
- 4

Has the holding entity been structured correctly before capital moves?

The 469(c)(3)(A) exclusion, the 1031 eligibility of a real estate replacement property, and the accredited-investor gating on exempt securities offerings are all determined by documentation and entity structure set up in advance, not after the fact.

Five Questions to Bring to Your CPA or Tax Attorney

- Does the current capital contribution structure preserve the IRC 469(c)(3)(A) exclusion, or does a liability-limiting entity inadvertently convert the position to passive treatment?
- How does the four-layer loss limitation stack — tax basis, at-risk rules under IRC 465, the passive activity rules, and the excess business loss limitation under IRC 461(l) — apply to this specific capital contribution and the owner's broader tax position?
- What percentage of post-exit capital is earmarked for near-term liquidity needs versus multi-year capital deployment, and does that split match the liquidity profile of each option under consideration?
- For real estate allocations, does the owner's current schedule realistically support the 750-hour real estate professional test, or will the position remain subject to the \$25,000 allowance phase-out?
- How does each option's governance structure align with the owner's stated preference for operational visibility versus fully hands-off capital deployment?

Exiting operators rarely regret taking the time to understand a structure before committing capital to it. The three paths compared here — entrepreneurial JV working interest ownership, passive real estate, and public securities — are not competing versions of the same product. They are differently engineered structures that respond to different combinations of income timing, governance preference, liquidity need, and tax classification. The right allocation for a founder six months removed from a transaction is rarely all one option. It is an informed combination, built with a tax advisor who understands how IRC Section 469(c)(3)(A), the real estate phase-out thresholds, and public securities' double-taxation mechanics actually interact with that specific founder's income and timeline. Understanding the mechanics first is what turns a post-exit capital decision into a durable one.

Sources: [1] Treas. Reg. 1.612-4(a) [2] IRC §263(c) [3] 26 U.S.C. §469(c)(3)(A) [4] IRC §§611, 613A [5] IRS Pub. 925 [6] IRC §469(c)(7) [7] Unrecaptured §1250 gain [8] CBRE H1 2026 Cap Rate Survey [9] C-corp double taxation mechanics [10] SEC Rule 501, Reg. D [11] Fidelity S&P 500 historical returns [12] RBC Wealth Management "The Great Narrowing" [13] IRC §465 [14] IRC §461(l)