

An aerial photograph of an industrial facility, likely an oil or gas processing plant, taken at dusk or dawn. The scene features several large storage tanks, industrial buildings, and two prominent oil derricks. The facility is surrounded by a parking lot with several vehicles. In the background, there are rolling hills and mountains under a dark sky. The overall lighting is dim, with some artificial lights from the facility providing a slight glow.

# The 45-Day 1031 Identification Checklist: What Every Real Estate Owner Needs to Know

A Practical Timeline Framework for Identifying Qualified Replacement Property, Coordinating Your Exchange Team, and Addressing Unavoidable Boot Before the Statutory Clock Expires

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# Why This Checklist Matters

Once a commercial, multifamily, or land parcel closes, two federal statutory clocks begin running on the same day, and neither one pauses for weekends, holidays, or a slow search for qualified replacement property. The 45-day identification window and the 180-day exchange period run concurrently, not sequentially, from the date the relinquished property transfers title. Missing either deadline, or identifying property incorrectly, converts a deferred gain into an immediately taxable event, layering federal and state capital gains tax, depreciation recapture, and potentially the Net Investment Income Tax onto a single tax return.

This checklist organizes the identification period into sequential stages, outlines how a working interest in producing oil and gas real property can qualify as replacement property under Revenue Ruling 68-331, and provides a parallel verification path for owners who are already facing boot or a missed deadline. Use it alongside, not in place of, a qualified intermediary, CPA, and tax attorney.

## **45-Day Clock**

Identify qualified replacement property in writing before midnight on Day 45 from closing.

## **180-Day Clock**

Close on the identified replacement property before Day 180 — running concurrently, not after Day 45.

## **Missed Deadline Risk**

Any missed deadline converts deferred gain into an immediately taxable event on your return.

# Before You Begin

Proper preparation before the clock starts is the single most important factor in a successful exchange. Work through every item below before or immediately at closing.

## **1 Confirm the Exact Closing Date**

This date, not the contract date, starts both the 45-day and 180-day clocks.

## **2 Confirm QI Was Engaged Before Closing**

A Qualified Intermediary engaged after closing generally disqualifies the exchange entirely.

## **3 Calculate and Confirm Both Deadlines**

Calculate Day 45 and Day 180 on a calendar and confirm both with your QI in writing.

## **4 Gather Key Documents**

Collect the closing statement, exchange agreement, and prior depreciation schedule for the relinquished property.

## **5 Identify Disqualified Persons**

Identify who on your team qualifies as a "disqualified person" under the exchange rules — your attorney, CPA, employee, broker who represented you in the prior two years, or a relative — so their written confirmation of a replacement property does not count toward your identification.

## **6 Choose Your Path**

Decide whether you are pursuing full deferral (Direct Replacement, Path A) or anticipate partial boot or a missed window (Boot Mitigation, Path B). Many owners should prepare both paths in parallel.

# The Exchange Timeline at a Glance



## Immediate Actions

Days 1–10: Verify QI and notify advisors



## Active Search

Days 11–30: Identify and evaluate properties



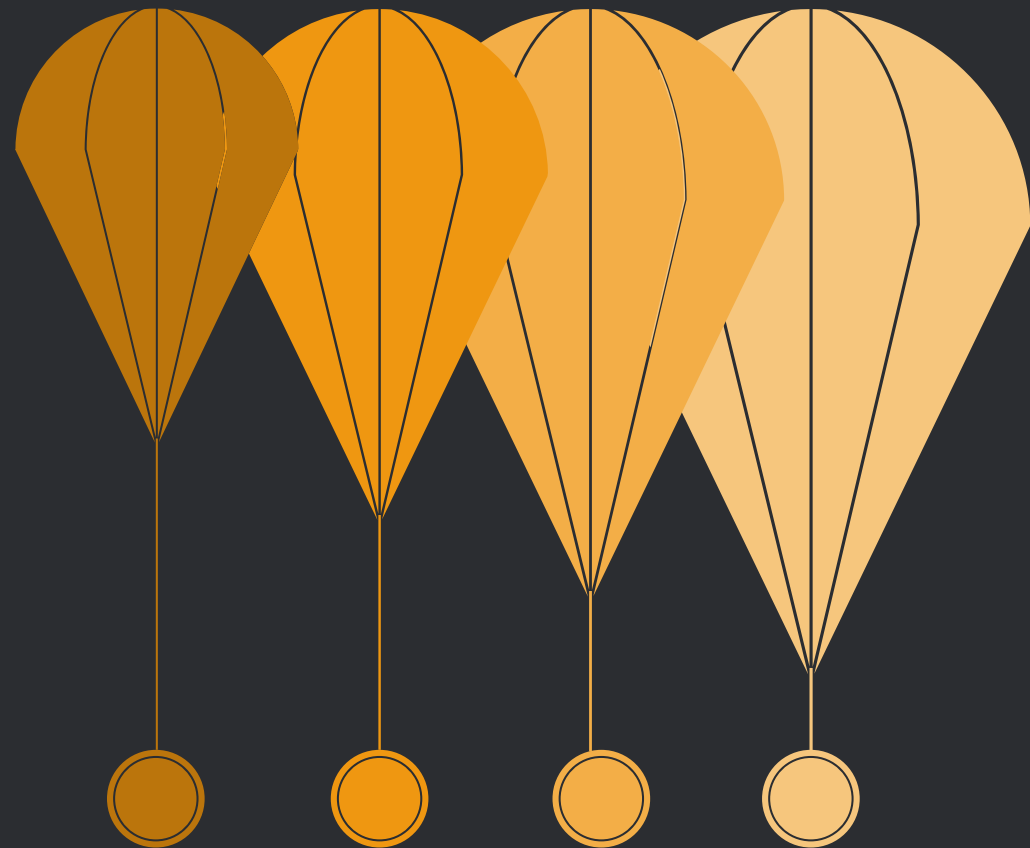
## File Identification

Days 31–45: Submit written identifications



## Close Acquisition

Days 46–180: Complete purchase and close



### Day 1–10: Immediate Actions

- Verify QI holds exchange proceeds
- Confirm Day 45 and Day 180 in writing
- Notify CPA and tax attorney
- Begin written candidate log
- Request API numbers for oil and gas candidates
- Confirm direct vs. entity-held interests

### Day 11–30: Active Identification Search

- Narrow shortlist with advisor review
- Confirm identification rule (Three-Property, 200%, or 95%)
- Request working interest documentation
- Confirm reserve and production data availability
- Discuss Revenue Ruling 68-331 applicability
- Draft written identification notice

# Day 31 to Day 45: Finalizing and Filing Identification

This is the most critical window of the entire exchange. Every item below must be confirmed before midnight on Day 45 — no exceptions.

## Unambiguous Legal Description

Confirm your written identification notice includes an unambiguous legal description for real estate, or the lease name, well name, API number, and county and state for a working interest.

## Signed by the Taxpayer

Confirm the identification notice is signed by you, the taxpayer, not by an agent.

## Delivered Before Midnight Day 45

Confirm the identification notice will be delivered to the QI, or another party who is not a disqualified person, before midnight on Day 45. Delivery after midnight on Day 45, even by a few minutes, disqualifies the identification.

## Dated Delivery Confirmation

Keep a dated delivery confirmation — email timestamp, signed receipt, or courier record — as proof of timely delivery.

## Revocation Rights Until Day 45

Remember identification can be revoked and replaced any time before the Day 45 deadline. If a stronger candidate emerges on Day 40, you may still substitute it.

## Check for Disaster Extensions

Confirm there is no pending federally declared disaster extension that could affect your specific deadline under Revenue Procedure 2007-56 or 2018-58, since this is the only recognized extension to the 45-day and 180-day periods.

## QI Receipt Confirmation

Re-confirm with your QI that the identification was received and logged before the deadline.

⚠️ Delivery after midnight on Day 45 — even by a few minutes — disqualifies the identification. There is no administrative grace period.

# Day 46 to Day 180: Closing the Replacement Acquisition

## Acquisition Checklist

### → Confirm Closing Timeline

Confirm your closing timeline for the identified working interest or property allows for title review, operating agreement execution, and QI fund release before Day 180.

### → QI Direct Fund Transfer

Confirm the QI will transfer exchange funds directly to the closing on the identified replacement property or working interest, consistent with exchange requirements.

### → Match Identified Description

Confirm the acquired interest matches, in description, the property identified in writing on or before Day 45. Acquiring a different, unidentified asset after Day 45 does not qualify.

### → Prepare Form 8824

Confirm your accountant has the information needed to prepare Form 8824, the IRS form reporting the like-kind exchange for the tax year in which the exchange closed.

### → Calculate Boot Exposure

Confirm whether any cash, debt relief, or non-like-kind property received during the exchange constitutes boot, and calculate the taxable portion before filing.

### → Retain Permanent Exchange File

Retain the executed operating agreement, title documentation, and QI closing statement as part of your permanent exchange file.

## Key Documents to Retain

- Executed operating agreement
- Title documentation for replacement property
- QI closing statement
- Written identification notice with delivery confirmation
- Exchange agreement
- Completed Form 8824
- Prior depreciation schedule

# Path A: Direct 1031 Like-Kind Replacement — Working Interest Qualification Checklist

A working interest in a producing oil and gas lease can qualify as like-kind replacement property under Revenue Ruling 68-331. Every item below must be confirmed before committing exchange funds.

1

## Producing Lease Confirmation

Confirm the candidate asset is a working interest in a producing oil and gas lease, held for productive use in a trade or business or for investment, consistent with the fact pattern addressed in Revenue Ruling 68-331.

2

## Direct Ownership Structure

Confirm the interest is held directly as a working interest owner, not as an interest in a partnership, LLC, or fund unit, unless a valid Section 761(a) election out of Subchapter K has been made.

3

## Governance and Transparency

Confirm the operating structure provides governance rights and operational transparency consistent with an active JV member rather than a passive ownership unit in a pooled entity.

4

## Identification Description Compliance

Confirm your QI and tax attorney have reviewed how the lease name, well name, API number, and county and state satisfy the "unambiguous description" requirement for identification.

5

## Section 1254 Property Analysis

Confirm whether the exchange involves Section 1254 property on both sides — relinquished and replacement both producing working interests — which can avoid triggering immediate recapture at the time of the exchange.

6

## Distinguish from DST Structures

Confirm your advisor has distinguished this working interest strategy from Delaware Statutory Trust structures, which rely on a different ruling (Revenue Ruling 2004-86) with separate restrictions that do not apply to a direct working interest.

# Path B: Tax Boot Mitigation Checklist

## When the Clock Cannot Be Met or Boot Is Unavoidable

When a deadline cannot be met or boot is unavoidable, a direct capital contribution into a working interest — made outside the exchange structure — may allow an election under IRC Section 263(c) to currently deduct eligible intangible drilling costs in the year incurred. This path addresses the tax exposure created by boot or a failed exchange rather than deferring the original gain.



### Quantify Boot Exposure

Confirm with your CPA the exact amount of taxable gain or boot that will result from a missed deadline, a partial exchange, or cash taken out of the transaction.



### Full Tax Exposure Modeling

Confirm this taxable amount's exposure to federal and state capital gains tax, depreciation recapture, and the Net Investment Income Tax before the return is filed.



### IDC Deduction Path

Discuss with your tax attorney and CPA whether a direct capital contribution into a working interest allows an election under IRC Section 263(c) to currently deduct eligible intangible drilling costs in the year incurred.



### Active Income Offset

Confirm the working interest is held directly, or through a general partnership structure without limited liability protection, to preserve the active income offset available under IRC Section 469(c)(3) rather than being limited to passive activity treatment.

## At-Risk Rules — IRC Section 465

Confirm with your CPA how the IRC Section 465 at-risk rules apply to the amount you are contributing, since the deduction is limited to amounts you have at risk in the activity.

## AMT Preference Item — IRC Section 57(a)(2)

Confirm whether any excess intangible drilling cost deduction creates an alternative minimum tax preference item under IRC Section 57(a)(2) for your specific tax situation.

- ❏ The exact share of costs eligible for current deduction depends on the specific drilling cost structure of the asset, your individual circumstances, and the elections made on your return. Confirm this figure directly with your CPA rather than relying on a general percentage.

# Timing Reminders and Warning Items

## Calendar Days — No Grace Period

Both the 45-day and 180-day periods are calendar days, counting weekends and federal holidays. There is no administrative grace period outside a declared disaster extension.

## Concurrent Clocks — Not Sequential

The 45-day and 180-day periods run from the same closing date, concurrently. The exchange period is not 225 total days.

## QI Must Be Engaged Before Closing

A QI engaged after the relinquished property has already closed will generally disqualify the exchange entirely.

## Written and Signed Identification Required

Verbal identification, a text message, or a conversation with your QI does not satisfy the written and signed identification requirement.

## Identification Rule Limits Are Absolute

Identifying more properties or value than the Three-Property, 200 Percent, or 95 Percent Rule allows can invalidate the entire identification, not just the excess items.

## Related-Party Exchange Restrictions

A related-party exchange under Section 1031(f) carries its own two-year holding requirement and separate disqualification risk; confirm this applies to your transaction if the replacement interest involves a family member or related entity.

## Entity-Held Interests Do Not Qualify

Acquiring an interest in a partnership, LLC, or fund that owns a working interest, rather than the working interest itself, generally will not qualify as like-kind replacement property.

# Advisor Coordination, Final Verification & Sources

## Final Advisor Coordination Checklist

- Confirm your QI has direct experience with resource-based or working interest identifications, not only conventional real estate. This is an area where many qualified intermediaries have limited exposure.
- Confirm your tax attorney has reviewed the specific language of your written identification before Day 45, not after.
- Confirm your CPA has modeled both the Path A full-deferral outcome and the Path B boot-mitigation outcome so you understand your tax position under either result.
- Confirm Form 8824 preparation responsibilities and the supporting documentation your CPA will need before the filing deadline.
- Confirm the operating agreement, governance rights, and capital contribution terms for any working interest under consideration have been reviewed by your attorney before funds are committed.
- Schedule a final verification call with your QI, CPA, and tax attorney in the week before Day 45 to confirm every identification requirement has been satisfied.

## Checklist Review

Working through these items in sequence keeps a time-sensitive exchange from becoming a reactive scramble in the final days of the identification window. The combination of a concurrent 45-day and 180-day clock, strict written identification mechanics, and the three numerical identification rules leaves little room for improvisation once the relinquished property has closed.

Owners evaluating a working interest in producing oil and gas real property as qualified replacement property under Revenue Ruling 68-331, or evaluating a direct capital contribution into a working interest to address boot through an IRC Section 263(c) election, should treat this checklist as a coordination tool for the conversation with their qualified intermediary, CPA, and tax attorney, not as a substitute for that professional review.

[Speak With a 1031 Specialist](#)

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## Sources and References

- Revenue Ruling 68-331, 1968-1 C.B. 352 (lessee's working interest in a producing oil lease classified as like-kind to a fee interest in real estate under Section 1031(a))
- 26 CFR 1.1031(k)-1, Cornell Legal Information Institute (identification and receipt requirements for delayed exchanges)
- Internal Revenue Code Section 1031(a), Section 263(c), Section 469(c)(3), Section 465, and Section 57(a)(2)
- IRS Form 8824 and accompanying instructions
- Revenue Procedure 2007-56 and Revenue Procedure 2018-58 (disaster-related extension provisions)
- Revenue Ruling 78-135 (general partnership interests do not qualify for Section 1031 nonrecognition)
- Section 1031(f) related-party exchange provisions
- EPC1031, Holland and Knight, and JTC Group publications on direct working interest holding requirements for 1031 eligibility
- Anchor1031 and 1031 Specialists publications on Qualified Intermediary coordination and the written identification requirements