

The background of the entire page is an aerial photograph of a city skyline. A tall, modern glass skyscraper is the central focus, reflecting the sky and surrounding buildings. Other smaller buildings and streets are visible in the background, creating a dense urban environment. The lighting suggests a hazy or overcast day.

The 45-Day 1031 Identification Checklist

A Practical Framework for Meeting IRS Identification Deadlines, Evaluating Replacement Property Options, and Protecting Your Capital Gains Deferral

Get Expert Guidance

Why This Checklist Matters

Two Clocks. Zero Extensions.

Commercial real estate sellers, multifamily property sellers, and land and development sellers operating under IRC Section 1031 face two statutory clocks that begin running the moment the relinquished property closes: a **45 calendar day identification period** and a **180 calendar day closing period**.

Both periods run concurrently from the same closing date, not sequentially, and neither period is extended for weekends, holidays, or a slow replacement property search. There is no administrative appeal for a missed deadline except federally declared disaster relief under Rev Proc 2007-56 and Rev Proc 2018-58.

The Cost of Failure

A failed exchange does not simply cancel the transaction. It converts the full deferred gain into a current year taxable event, exposing the seller to:

- Federal and state capital gains tax
- The 3.8 percent Net Investment Income Tax
- Depreciation recapture taxed at a rate up to 25 percent

All taxes are due in the year the relinquished property closed — regardless of whether a replacement property was ever acquired.

 This checklist is an execution and verification tool, not tax or legal advice. Every item should be confirmed with a qualified intermediary, CPA, or 1031 attorney before action is taken.

This checklist organizes the identification window into sequential action stages, outlines two distinct paths for sellers to consider with their qualified intermediary and tax advisor — direct like-kind replacement and tax boot mitigation — and flags the recurring errors that cause otherwise qualified exchanges to fail.

Before You Begin

Before the clock starts, confirm these foundational items are in place. A single misstep at this stage can disqualify the entire exchange before it begins.

Confirm Closing Date in Writing

Confirm the relinquished property closing date in writing. This date triggers both the 45-day and 180-day clocks.

QI Engaged Before Closing

Confirm a Qualified Intermediary (QI) was engaged and exchange documents were signed **before** the relinquished property closed. A QI engaged after closing disqualifies the exchange entirely.

No Disqualifying Relationship

Confirm the QI has no disqualifying relationship to you. Disqualified parties include your attorney, CPA, real estate agent, broker, or employee who performed services for you within the prior two years, and close relatives.

Proceeds Routed to QI

Confirm exchange proceeds were routed directly from the closing escrow to the QI — never through your hands or control at any point.

Calculate and Share Deadlines

Calculate your exact Day 45 and Day 180 deadlines on a calendar and share them with every advisor involved, including CPA, QI, attorney, and any replacement property sponsor.

The 45-Day Action Timeline



Days 1–10: Scope Search

Define target value and property types



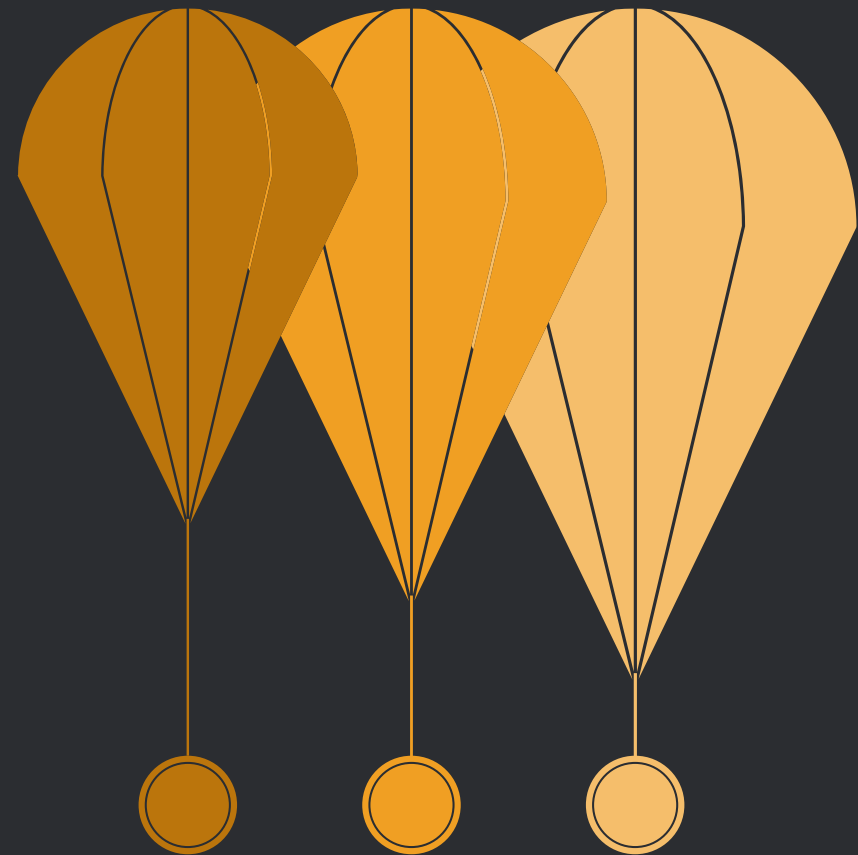
Days 11–30: Narrow Candidates

Document and prioritize potential replacements



Days 31–45: Finalize IDs

Confirm selections and deliver identification



Days 1 to 10: Scope the Replacement Property Search

- ☐ Determine your reinvestment target: to fully defer gain, replacement property value and debt must equal or exceed the relinquished property's value and debt.
- ☐ Decide whether you are pursuing operating real estate, a Delaware Statutory Trust interest, a direct working interest in oil and gas real property, or a combination.
- ☐ If management burden ("toilets, tenants, and trash") is a primary motivation for selling, evaluate replacement property types that do not require landlord-style active management.
- ☐ Confirm with your CPA whether you anticipate boot — cash or debt relief not reinvested — so a mitigation path can be planned in parallel rather than after the fact.
- ☐ If considering oil and gas working interests, confirm the interest will be held directly or through a structure that does not limit liability (such as a general partnership election under Section 761(a)), not through an LLC, limited partnership, or fund unit. Only direct holding preserves real property classification.

Days 11 to 30: Narrow and Document Candidates

- ☐ Select the identification rule you intend to use: the Three Property Rule (up to three properties regardless of value), the 200 Percent Rule (unlimited properties if combined fair market value does not exceed 200 percent of the relinquished property's value), or the 95 Percent Rule (unlimited properties, but you must ultimately acquire at least 95 percent of the identified value).
- ☐ If using the 95 Percent Rule, confirm you understand this is the highest risk option because failure to close on 95 percent of identified value can disqualify the entire exchange.
- ☐ For real estate candidates, order or review title, environmental, and condition reports early enough to confirm viability before Day 45.
- ☐ For a working interest candidate, request the operator's well information — including lease name, well name, API number, and legal description — in writing. This is the information needed for an unambiguous Day 45 description.
- ☐ Request a written legal opinion or memorandum addressing why the specific replacement property qualifies as like kind under Section 1031, particularly for non-traditional property types.
- ☐ Draft your written identification notice in advance so it is ready to sign and deliver well before the deadline, not on Day 45 itself.

Days 31 to 45: Finalize and Deliver Identification

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

1 Unambiguous Property Description

Confirm your written identification notice includes an unambiguous description of each property: legal description or street address for real estate, and lease name, well name, API number, and location for a working interest.

2 Signed by the Taxpayer

Confirm the identification notice is signed by you, the taxpayer, personally or through an authorized signatory.

3 Delivered Before Midnight Day 45

Deliver the identification notice to the QI, the seller of the replacement property, or another non-disqualified party, in writing, before midnight on Day 45.

4 Retain Delivery Confirmation

Retain delivery confirmation — email timestamp, courier receipt, or fax confirmation — as part of your exchange file.

5 Revocation Rights

If your preferred property falls through before Day 45, revoke the prior identification in writing and submit a replacement identification before the deadline. Identification can be changed any time before Day 45 closes.

6 Verify Rule Compliance

Confirm the total number and value of identified properties complies with the rule selected — Three Property, 200 Percent, or 95 Percent.

7 If No Property Identified

If Day 45 arrives with no suitable identified property, immediately begin the Tax Boot Mitigation discussion outlined below with your CPA, since the exchange cannot proceed to the next stage without a timely, compliant identification.

Days 46 to 180: Close and Report

Closing Checklist

- ☐ Confirm the purchase agreement for the identified replacement property is executed and moving toward closing well before Day 180.
- ☐ Confirm financing, if any, for the replacement property is pre-approved early enough to close within the remaining window.
- ☐ Confirm the QI releases exchange funds directly to the closing of the replacement property, not to you.
- ☐ Confirm the replacement property closing occurs on or before Day 180, or the due date of your tax return for the year of the relinquished property sale, including extensions, whichever is earlier.

Reporting Checklist

- ☐ File Form 8824, Like Kind Exchanges, with your federal tax return for the year the relinquished property was sold, reporting the identified and acquired replacement property.
- ☐ Confirm with your CPA whether any state-specific 1031 reporting or clawback rules apply in the state where the relinquished property was located.

☐ The replacement property closing must occur on or before Day 180 — or the due date of your tax return including extensions — whichever is **earlier**.

45

Day Identification Window

Calendar days from closing to identify replacement property

25%

Max Recapture Rate

Depreciation recapture tax rate on a failed exchange

180

Day Closing Window

Calendar days from closing to complete the exchange

3.8%

NIIT Exposure

Net Investment Income Tax triggered by a failed exchange

Path A: Direct 1031 Like-Kind Replacement Into a Working Interest

Use this path when the identification and closing clocks are both still achievable and a direct oil and gas working interest fits your reinvestment target.

1	Confirm Real Property Classification Confirm with counsel that the working interest will be classified as real property for federal tax purposes, consistent with Revenue Ruling 68-331 .
2	Confirm Direct Holding Structure Confirm the interest is acquired directly in your name, or through a structure that does not limit liability — since partnership, LLC, or fund unit interests do not qualify as like kind real property for Section 1031 purposes.
3	Meet Full Reinvestment Target Confirm the working interest's value and any associated debt, combined with other identified property, meets your full reinvestment target to avoid boot.
4	Governance and Transparency Confirm governance rights and operational transparency available to you as a working interest owner, including access to production reporting, well status updates, and operator communication.
5	Tax Treatment Modeling Confirm the operator's basis in reporting production income, operating expense allocation, and depletion so your CPA can model post-closing tax treatment.
6	Section 1254 Recapture Interaction Discuss with your CPA how depreciation recapture exposure from the relinquished property, if any, interacts with Section 1254 recapture rules when both relinquished and replacement properties are producing working interests.
7	Form 8824 Documentation Confirm Form 8824 will reflect the working interest as the replacement property, with supporting documentation retained in your exchange file.

Path B: Tax Boot Mitigation Through an IDC Election

Use this path when the 45-day window has closed without a qualifying identification, when suitable replacement property cannot be found, or when boot is unavoidable because full reinvestment is not achieved.

When to Use Path B

- The 45-day window closed without a qualifying identification
- Suitable replacement property cannot be found
- Boot is unavoidable because full reinvestment is not achieved

A direct capital contribution into an oil and gas working interest as a separate, non-exchange transaction can generate a current year Intangible Drilling Cost (IDC) deduction under **IRC Section 263(c)**.

Path B Checklist

- ☐ Confirm with your CPA the exact dollar amount of taxable gain or boot resulting from the shortfall or missed exchange.
- ☐ Discuss a direct capital contribution into an oil and gas working interest as a separate, non-exchange transaction intended to generate a current year IDC deduction under IRC Section 263(c).
- ☐ Confirm with your CPA that the IDC deduction amount depends on the specific drilling cost structure of the wells involved, your individual tax circumstances, and the elections made — since deduction percentages vary and should never be assumed at a flat rate.
- ☐ Confirm the working interest will be held directly or through a liability-bearing structure, since IRC Section 469(c)(3) requires direct holding for IDC-related deductions to offset active income rather than being limited by passive activity loss rules.
- ☐ Confirm your at-risk capital exposure under IRC Section 465, since the IDC deduction is capped at your actual economic exposure — cash and recourse debt, not nonrecourse financing.
- ☐ Confirm with your CPA whether excess IDC triggers an Alternative Minimum Tax preference item under IRC Section 57(a)(2), and whether any applicable exception reduces that exposure.
- ☐ Confirm the timing of the capital contribution relative to the tax year in which the boot or failed exchange gain is recognized, since the offsetting deduction generally must fall in the same tax year to be effective.
- ☐ Review with your CPA how this path affects estimated tax payments and withholding for the current tax year.

Timing Reminders and Warning Items

These are the recurring errors that cause otherwise qualified exchanges to fail. Review each item carefully.



No Weekend Extensions

Do not assume weekends or holidays extend Day 45 or Day 180. Both are strict calendar day counts.



Avoid Disqualified Parties

Do not use a disqualified party — your attorney, CPA, broker, or a relative — to receive or hold identification notices or exchange funds.



Never Touch the Proceeds

Do not take actual or constructive receipt of exchange proceeds at any point, even briefly, or the exchange is disqualified.



No Entity Interests

Do not identify a partnership, LLC, or fund interest as replacement property expecting Section 1031 treatment. Entity interests generally do not qualify — only direct ownership of the underlying real property interest does.



Don't Wait Until Day 44

Do not wait until Day 44 to begin drafting your identification notice. Build in buffer time for signature logistics and delivery confirmation.



Related Party Rules

Do not assume related party exchanges are automatically disqualified, but confirm the two-year holding requirement under IRC Section 1031(f) with counsel if a related party is involved.



Monitor Legislative Changes

Do not overlook the interaction between the one big beautiful bill act and your exchange. Confirm with your CPA that current law changes have not altered Section 1031 mechanics or IDC first-year deductibility for your specific situation.

Advisor Coordination, Final Verification & Checklist Review

Advisor Coordination Checklist

- ☐ Confirm your QI, CPA, and any replacement property counsel are in direct communication with each other, not only with you individually.
- ☐ Confirm your CPA has modeled both outcomes — a completed exchange and a failed or partial exchange with boot — so you understand the tax exposure under each scenario before Day 45.
- ☐ Confirm all identification and closing documentation is retained in a single exchange file for at least the IRS statute of limitations period applicable to your return.
- ☐ Confirm your tax return preparer has a copy of the signed identification notice, delivery confirmation, and closing statements before filing Form 8824.
- ☐ Confirm you have reviewed governance rights, capital contribution terms, and operational transparency provisions with any working interest sponsor before executing documents, whether pursuing Path A or Path B.
- ☐ Schedule a final pre-Day 45 review call with your QI and CPA to confirm every item above is complete and documented.

Checklist Review

The 45-day identification period is the single narrowest point of failure in an otherwise well-understood exchange process, and most failures trace back to a small number of recurring errors: late QI engagement, ambiguous property descriptions, identification delivered to a disqualified party, or an entity interest mistakenly identified instead of a direct real property interest.

Working through this checklist in sequence — from QI engagement before closing through Form 8824 filing — gives real estate sellers a structured way to verify compliance at each stage rather than discovering a gap after the deadline has passed.

Sellers evaluating direct oil and gas working interests as replacement property should treat Revenue Ruling 68-331 and the direct holding requirement as the two threshold questions to resolve first with counsel, since both determine whether the asset qualifies at all. Sellers facing an unavoidable shortfall or a missed deadline should bring the IRC Section 263(c) IDC mitigation path into the conversation with their CPA as early as possible, since its value depends on timing the capital contribution to the same tax year as the recognized gain.

Neither path replaces the judgment of a qualified intermediary, CPA, or 1031 exchange attorney, and every item in this checklist should be verified with those professionals before a transaction is executed.

Sources and References

- Internal Revenue Code Section 1031 and 26 CFR 1.1031(k)-1, identification and receipt rules for delayed exchanges
- Revenue Ruling 68-331, 1968-1 C.B. 352, lessee's working interest in a producing oil and gas lease held like kind to a fee interest in real estate
- Revenue Procedure 2007-56 and Revenue Procedure 2018-58, disaster relief extensions to 1031 deadlines
- IRC Section 263(c) and Treasury Regulation 1.612-4, election to expense Intangible Drilling Costs
- IRC Section 469(c)(3), working interest exception to passive activity loss limitations
- IRC Section 465, at-risk limitation on deductions
- IRC Section 57(a)(2), excess Intangible Drilling Costs as an Alternative Minimum Tax preference item
- IRC Section 1254, recapture rules applicable to oil and gas property dispositions
- IRC Section 1031(f), related party exchange holding period requirements
- IRS Form 8824 instructions, Like Kind Exchanges reporting
- IRS Fact Sheet FS-08-18, like kind exchange identification and timing requirements

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