The 1031 Boot Atlas

Every kind of boot, how it is taxed, how to avoid or offset it, and where a structured installment sale fits.

A 1031 exchange defers tax only on what you roll into real estate. Anything else you receive is boot, taxed up to your gain (IRC §1031(b)). Since 2018 only real property is like-kind. This atlas lists every common kind of boot, how it is taxed, how to avoid or offset it, and where a structured installment sale fits.

The one rule. To defer all of the gain: (1) buy replacement property worth at least your net sale price (price minus selling costs), (2) put every dollar of net cash from the sale into it, and (3) if a loan was paid off at closing, carry at least as much new debt on the replacement, or add your own cash to make up the difference. No loan on the old property? Then step 3 does not apply.

The atlas: every kind of boot

Boot	What it looks like	How it is taxed	How to avoid or offset it	Structured sale?
Cash at closing	Sale money paid to you instead of the intermediary, including an earnest deposit you keep	Gain up to the cash, in the year of the sale	Send every dollar to the intermediary	Yes, if carved out before closing
Leftover exchange money	Cash the intermediary releases after your last purchase, at day 45 with nothing identified, or at day 180	Taxed when released; can land in the next tax year (Reg. §1.1031(k)-1(j)(2))	Buy at least the net price; identify a backup or a second property	No. Once it is at the intermediary, only the timing rule is left
Cash taken mid-exchange	Money released before the replacement closes, even if you put it back later	Boot anyway (Reg. §1.1031(k)-1(j)(3), Ex. 2)	Don't take it	No
A right to demand cash	An exchange agreement that lets you call for the money	Treated as received: all of it makes the deal a sale, part of it is boot (Exs. 3, 4)	An agreement with the (g)(6) limits	No
Non-selling costs from exchange money	Rent prorations and tenant deposits credited to the buyer, utilities, repair credits, fees on your new loan	Generally treated as cash boot (no regulation lists them; they do not break the intermediary's limits, Reg. §1.1031(k)-1(g)(7))	Pay them with your own money at closing	No
Debt relief (mortgage boot)	The old loan is paid off at closing and the new property carries less debt	Treated as cash received, in the year of the exchange (§1031(d); Reg. §1.1031(d)-2)	More debt on the replacement, or your own cash added	No. It is not cash, so there is nothing to spread
Trading down	Replacement worth less than your net sale price	Shows up as cash boot, debt relief or both	A bigger replacement, a second property, an improvement exchange, or a Delaware statutory trust interest	Yes, for the cash part
Personal property received	Furniture and appliances that come with the replacement	Boot at its value, even when small; the 15% rule only protects the exchange paperwork ((g)(7)(iii))	Price it separately in the contract	No
Buyer's note (seller financing)	You carry part of the price, directly or through the intermediary	Installment method: taxed as principal is paid (§453(f)(6); (j)(2)(iii))	n/a	Already spread, on the buyer's credit
Planned structured boot	A slice of the price paid at closing to an assignment company, written in before closing	Installment method, taxed as payments arrive (§453(f)(6))	n/a	This is the structured sale
Recapture with no boot	A cost-segregated building traded for one with fewer short-life parts	Ordinary income in the year of the exchange (§1245(b)(4))	Check the replacement's makeup before you buy	No (§453(i))
Related party	Trading with family or your own entity, or buying from them through an intermediary	Deferral is lost if either side sells within two years (§1031(f)); buying from them through an intermediary can fail outright (Rev. Rul. 2002-83)	Hold two years; ask exchange counsel first	No

Not boot: selling costs paid at closing, such as the commission, title and escrow fees, and recording and transfer taxes. Form 8824 subtracts them before boot is counted (instructions, line 15), so money spent on them is not cash you received. Whether a particular closing credit is boot is a question for your CPA before closing, not after.

What offsets what (Reg. §1.1031(d)-2, Ex. 2)

You...	Offsets debt relief?	Offsets cash you receive?
Take new debt on the replacement	Yes	**No, never**
Add your own cash to the replacement	Yes	No. Cash taken out and paid back is still boot
Pay selling costs at closing	Not boot: Form 8824 subtracts them first (line 15)	

The loan question, worked

Free and clear (no loan). No debt relief is possible, so there is no mortgage boot. Just reinvest the cash. A new loan to buy more is fine and creates no boot. It never offsets cash you take.

Simple example: $1,000,000 sale, $60,000 of selling costs, $940,000 to the intermediary, $300,000 basis, $640,000 of gain.
$940,000 replacement, all cash: no boot.
$1,500,000 replacement with the $940,000 and a $560,000 loan: no boot.
Same building, $840,000 of exchange money, a $660,000 loan, $100,000 to you: $100,000 of boot; $540,000 deferred.

Loan paid off at closing. The payoff is debt relief. New debt or your own cash makes it up. (In a sale with no exchange, the same payoff is a year-one payment.)

Simple example: $2,000,000 sale, $100,000 of costs, $800,000 loan paid off, $1,100,000 to the intermediary, $600,000 basis, $1,300,000 of gain.
$1,900,000 replacement, $800,000 new loan: no boot.
$1,800,000 replacement, $700,000 loan: $100,000 of boot.
$1,900,000, $700,000 loan plus $100,000 of your cash: no boot.
$1,900,000, $900,000 loan, $100,000 sent to you: $100,000 of boot.

Refinancing. A cash-out refinance of the old property right before the exchange can be treated as cash out of the exchange (*Long v. Commissioner*, 77 T.C. 1045 (1981)); debt with its own business reason was respected in *Garcia v. Commissioner*, 80 T.C. 491 (1983). No rule sets a waiting period. The cleaner path: exchange everything, then borrow on the new property later as its own deal. Paying off the old loan with your own money before the sale is fine. Never have the intermediary pay any other debt.

How recognized boot is taxed (federal ceilings, 2026)

Layer	What it is	Rate
Ordinary recapture	§1245 (cost-seg 5 and 7-year parts, personal property); §1250(a) on bonus-depreciated 15-year land improvements	Ordinary, up to 37%; always in year one (§453(i))
Unrecaptured §1250 gain	Straight-line depreciation on the building; recognized gain usually comes from this layer first	Ordinary rates, capped at 25%
Long-term capital gain	The rest	0%, 15% or 20%
NIIT	Passive investor, above $250,000 modified AGI (joint)	3.8%
State	California taxes all gain as ordinary income	Up to 13.3%

Worksheet: your boot

Line	Amount
A. Cash you receive after selling costs are paid, plus the value of any non-real-estate property (furniture, a note)	
B. Debt paid off or assumed on the property you sell	
C. New debt on the replacement + your own cash added	
D. Net debt relief = B - C (not below zero)	
E. Boot = A + D	
F. Realized gain = price - selling costs - adjusted basis	
G. Recognized gain = the lesser of E or F	

Simple example: $2,000,000 sale, $500,000 basis after $400,000 of straight-line depreciation, no loan, costs ignored: $1,500,000 of gain. A $1,600,000 replacement and $400,000 kept: $400,000 recognized, all from the 25% unrecaptured §1250 layer; $1,100,000 deferred.

Where a structured installment sale fits

Only cash-type boot can be put on a schedule. Boot taken as an installment obligation is taxed as payments arrive: §453(f)(6) leaves the like-kind property out of contract price and payments, so each boot dollar is usually close to a full dollar of gain. Two ways to hold it: seller financing (buyer credit risk, early payoff possible) or a structured installment sale (the buyer pays in full at closing and a payer funded by a highly rated life insurer pays you on a fixed schedule, with no buyer to chase; there is no published IRS ruling on this specific structure, so have your CPA review the documents; a commission is built into the pricing). If you have suspended passive losses on property you keep, boot gain is passive income those losses can absorb, so sizing the structured slice to them can bring the cash out with little tax on its gain.

Three rules that keep the exchange intact. (1) Carve the installment portion out in the purchase contract, exchange agreement and escrow instructions before closing. (2) It never touches the intermediary as cash. (3) Get your intermediary's and exchange counsel's sign-off before you list. You cannot structure boot after closing or during the 45 days.

A 1031 alone ignores the estate problem. The step-up at death erases income tax on the gain. It does not touch estate tax, which is 40% above $15,000,000 per person ($30,000,000 for a couple, 2026). A couple worth $15,000,000 today and growing 6% is about $86,200,000 at 90, against an indexed line near $62,900,000. If that is you, the boot slice can do double duty: sized to your suspended losses, its payments can fund a life insurance policy in an irrevocable trust that pays the estate tax. The extreme version, in The Waterfall Strategy, shows $0 federal income tax on the sale and an estate tax bill paid by the policy; most people get part of it. Ask your CPA and an estate attorney.

Suspended passive losses and state rules

A 1031 is not a fully taxable disposition, so the old building's own suspended losses stay suspended (§469(g)); boot gain is passive income that can absorb them. California: the intermediary withholds on boot over $1,500 (Form 593), and an exchange into property outside California means filing FTB 3840 every year until the deferred California gain is taxed. Other states have their own rules.

Questions to ask your CPA

- How much boot is in my deal, counting cash, debt relief, closing credits and personal property?
- Was my old loan replaced dollar for dollar? If I have no loan, am I reinvesting every dollar?
- Which layer will the recognized gain come from, and does §1245(b)(4) apply to my old building's cost segregation?
- Will my intermediary allow an installment carve-out at closing?
- What does my state do to the boot and to the deferred gain?

Run it: installmentsalecalculator.com/1031-boot-calculator/ · **Read it:** thewaterfallstrategy.com/blog/1031-boot/

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