FOR QUALIFIED INTERMEDIARIES AND 1031 EXCHANGE ACCOMMODATORS

The Boot Guy's Brief for QIs: Structuring the Part the Exchange Can't Place

Most exchanges leave something behind. How boot is taxed, how to split the price before closing, what the (g)(6) and (j)(2) rules do once the money is with you, and a one-page chart for the leftover.

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1. One-Page Summary

Hans Goldstein is the boot guy. He is not against the exchange. He works on the part of the price that the exchange will not place: cash the seller wants to keep, debt that will not be replaced, a trade-down, or an exchange that may come up short. His job is to make that leftover cost less, so the seller can say yes to the replacement property that pencils instead of chasing one that does not.

Three things every QI already sees, and what they mean for the seller:

1. **Boot is taxed in an order that hurts.** Recognized gain in an exchange is generally treated first as depreciation-related gain: §1245 recapture at ordinary rates, then unrecaptured §1250 gain at up to 25%, before any of it reaches the 15% or 20% capital gain rates. Add the 3.8% net investment income tax where it applies, and the state. The dollars that do not make it into the replacement are the seller's most expensive dollars (Section 2).
2. **The split has to be made before closing.** A seller who knows part of the price will not be reinvested can have that part paid at closing, by the buyer, directly to an assignment company in a structured installment sale, and report it as payments arrive. That must be written into the purchase agreement and carved out of the exchange agreement **before** the money moves (Section 3).
3. **Once the money is with the QI, it stays exchange money.** The (g)(6) restrictions keep the seller from receiving, pledging, borrowing or otherwise obtaining the benefits of the funds until a release point. A failed or partial exchange still gets a timing benefit under Treas. Reg. §1.1031(k)-1(j)(2): gain is reported when the QI actually pays out, which can push it into the next tax year. That is timing only, not a payment schedule (Section 4).

Win back the files you lost. Section 7 is a 30-minute pull of old exchange inquiries and dropped files, with scripts and a tracking sheet.

What Hans asks of a QI: when you see boot coming, before closing, send the deal facts in Section 9 with the seller's permission. Hans runs the side-by-side for the seller and the seller's CPA. If the exchange covers everything, he says so. No referral fee is paid or asked, and the QI stays in charge of the exchange.

> **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). See the estate layer in Section 8.
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> **The rule:** the structured part is decided in the purchase agreement and the exchange agreement before closing. After the buyer's money reaches the QI, the only tools left are the exchange itself and the (j)(2) timing rule.

2. Where Boot Comes From and How It Is Taxed

Gain is recognized to the extent of money and other property received (IRC §1031(b)). Since 2018, only real property qualifies for like-kind treatment (Form 8824 instructions), so anything else the seller receives is boot.

Source	What it is	Primary text
Cash boot	Cash the seller receives at closing, or that the QI releases after the replacement is bought or the exchange ends	§1031(b); Reg. §1.1031(k)-1(j)(3) Ex. 1
Mortgage boot	Debt relieved on the property sold, to the extent not offset by debt on the replacement or by cash the seller adds	§1031(d) (liability assumed treated as money received); Reg. §1.1031(d)-2; Reg. §1.1031(k)-1(j)(3) Ex. 5
Other property	Non-like-kind property received, such as a note or personal property	§1031(b); Reg. §1.1031(k)-1(g)(7)(iii)
Trade-down	Replacement worth less than the property sold; shows up as cash boot, mortgage boot or both	Combination of the above

Netting, as the regulation states it. Debt relieved can be offset by debt taken on and by cash the seller pays in. Cash the seller **receives** is not offset by debt the seller takes on (Reg. §1.1031(d)-2, Ex. 2). Form 8824 line 15 follows the same order: net liabilities assumed by the other party are the excess over liabilities you assumed, cash you paid and other property you gave up. The regulation's examples speak of liabilities "assumed" or taken subject to; in a deferred exchange the replacement debt is usually a new loan. Have the seller's CPA confirm how the replacement financing is treated on the facts.

Incidental personal property. Furniture or other personal property that comes with the replacement building, up to 15% of the replacement's value, does not break the (g)(6) limits, but it is still boot (Reg. §1.1031(k)-1(g)(7)(iii) and the related example).

The order in which boot is taxed

- **§1245 recapture first, at ordinary rates.** Cost-segregated components (§1245 property) are recaptured as ordinary income, limited to the gain recognized **plus** the fair market value of non-§1245 property acquired (§1245(b)(4)). A replacement building is mostly non-§1245 property, so the limit rarely helps. The Form 8824 instructions include an example in which §1245 recapture ($50,000) exceeds the gain the

boot alone recognizes ($40,000). A seller who did a cost segregation study can owe ordinary income even with little or no boot. Ask before closing.

- **Unrecaptured §1250 gain next, at up to 25%.** Under §1(h)(6), recognized gain on a building is generally treated as unrecaptured §1250 gain (capital gain taxed at up to 25%) up to the depreciation taken and not already recaptured as ordinary income, before any is taxed at 15% or 20% (§1(h)(1)(E)).
- **15% or 20%** only on recognized gain above that.
- **3.8% net investment income tax** where it applies (§1411).
- **State tax** on top, as its own line (Section 6).

> **Example:** A seller exchanges a $3,000,000 building with a $900,000 loan, adjusted basis $1,200,000, depreciation taken $800,000. The replacement costs $2,500,000 with a $700,000 new loan. Net equity of $2,100,000 buys $1,800,000 of equity, leaving **$300,000 of cash boot**, and the debt drops by **$200,000 of mortgage boot**: $500,000 of boot on a $1,800,000 gain. Assuming all depreciation was straight-line on the building (no cost segregation), and because depreciation ($800,000) exceeds the boot, all $500,000 is unrecaptured §1250 gain: up to $125,000 at 25%, plus up to $19,000 of net investment income tax, before state tax. The seller kept $300,000 of cash; the federal bill alone can approach half of it. Illustration only; rates are federal maximums.
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> **Suspended passive losses:** boot does not release them (§469(g)(1)(A) needs all realized gain recognized), but recognized boot gain is passive income that passive losses can offset in that year (§469(a), (d)); the rest carries forward, and boot over time (§453(f)(6)) keeps absorbing losses. No regulation or IRS publication addresses boot by name; the seller's CPA should document it. Structured boot is carved out before closing, never through the intermediary (October 2026).

3. Splitting the Price Before Closing

A structured installment sale is designed as an installment sale under IRC §453, in which the buyer's deferred payment obligation is assigned at closing to an assignment company, which funds it with an annuity (or, in some programs, a funding agreement) from a life insurer and makes the payments. In an exchange that throws off boot, §453(f)(6) lets the boot be reported on the installment method: like-kind property is left out of the contract price and of "payments," and gross profit is reduced by the gain the exchange defers. Form 8824's instructions point to §453(f)(6) and Form 6252 for this case.

The open question, plainly. The regulation treats an obligation of anyone other than the buyer as a payment (Temp. Reg. §15a.453-1(b)(3)(i)). Structured programs rely on the obligation being the buyer's own, assumed by the assignment company as a term of the sale fixed before closing, with nothing the seller holds secured by cash and no funded interest set aside for the seller (the economic benefit doctrine, *Sproull v. Commissioner*, 16 T.C. 244 (1951)). That literal rule is the main risk, and it is sharpest where the buyer is released at closing. No statute, regulation or published ruling approves the step. The seller's own counsel should review it.

How it moves with a QI in the deal (the seller's attorney drafts or reviews each document; the assignment documents are usually the provider's forms):

1. **Purchase agreement:** price split into an exchange portion and a **Deferred Amount**, with the buyer obligated to pay the Deferred Amount at closing to the assignment company in exchange for its assumption of the buyer's payment obligation. Exchange cooperation and installment cooperation clauses both appear.

2. **Exchange agreement:** the (g)(6) restrictions on everything the QI holds, defining exchange funds as what is actually delivered to the QI, so the Deferred Amount is never paid to, held by or directed through the QI. The QI is not a party to the structured sale documents. The assignment of the purchase agreement to the QI, and the written notice of that assignment to the buyer (Reg. §1.1031(k)-1(g)(4)(v)), should cover only the exchange portion; counsel drafts it.
3. **Escrow instructions:** escrow wires the Deferred Amount from the buyer's funds to the assignment company on the buyer's instruction, and the balance to the QI. Nothing in the Deferred Amount is credited to the seller.
4. **After closing:** the QI completes the exchange with the exchange funds. The seller reports the structured payments on Form 6252 as they arrive.

Why the carve-out does not disturb the exchange. The regulation says the taxpayer "may receive money or other property directly from a party to the transaction other than the qualified intermediary" without affecting the QI safe harbor (Reg. §1.1031(k)-1(g)(4)(vii)). That sentence protects the exchange for the funds the QI holds. It says nothing about whether the structured piece qualifies for installment reporting; that rests on the §453 rules below and on how the assignment is drafted.

Why it must be done before closing. A structured sale needs a buyer obligation to assign. Once the buyer has paid the full price to the QI, the buyer owes nothing more, and anything bought with exchange funds would be the obligation of someone other than the buyer, which is a payment when received: "payment includes receipt of an evidence of indebtedness of a person other than the person acquiring the property," and a note "secured directly or indirectly by cash or a cash equivalent" is a payment (Temp. Reg. §15a.453-1(b)(3)(i)). Directing the QI to fund it would also be the seller obtaining the benefits of the funds, which the (g)(6) terms forbid. Hans has found no authority endorsing a conversion after closing.

> **For the QI:** the most useful thing you can do is ask, before closing, "Is all of this going into replacement property?" If the answer is no, the seller still has time to decide where the rest goes.
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> **Trade-offs, stated once:** the seller is a general unsecured creditor of the assignment company and cannot accelerate, pledge or sell the payments; state guaranty associations may not reach a payee who does not own the annuity. Recapture income is taxed in the year of sale regardless (§453(i)). If the face amount of installment obligations arising in the year (from sales over $150,000) and still outstanding at year end exceeds $5,000,000, an interest charge applies to a share of the deferred tax (§453A(b)(2), (c)). Programs set minimums and need lead time, commonly two to four weeks before closing.

4. When the Exchange Falls Short

The (g)(6) restrictions and when they lapse

The QI is not the seller's agent, and the seller is not in receipt of the funds, only if the exchange agreement "expressly limits the taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property held by the qualified intermediary" as (g)(6) provides (Reg. §1.1031(k)-1(g)(4)(i)-(ii)). Under (g)(6), the seller has no such rights before the end of the exchange period except:

Situation	Earliest release the agreement may allow	Reg.
Nothing identified by day 45	Any time after the end of the identification period	(g)(6)(ii)

Situation	Earliest release the agreement may allow	Reg.
Identified, all replacement property received	On receipt of all replacement property the seller is entitled to under the exchange agreement	(g)(6)(iii)(A)
Identified, a material and substantial contingency after day 45 that relates to the exchange, is in the written agreement, and is beyond the control of the seller and of disqualified persons (other than the person obligated to transfer replacement property)	On that contingency	(g)(6)(iii)(B)
Otherwise	End of the exchange period: the earlier of 180 days or the return due date with extensions	(g)(6)(i); §1031(a)(3)

The safe harbor ends when the seller gets "an immediate ability or unrestricted right" to the funds; a state-law right to fire the QI does not count ((g)(4)(vi)). Transactional items on the closing statement, such as commissions, prorated taxes and title fees, are disregarded ((g)(7)(ii)).

What (j)(2) does

If the seller had a **bona fide intent** to exchange at the beginning of the exchange period and the agreement has the (g)(6) limits, payment for §453 purposes is determined "as if the qualified intermediary is not the agent of the taxpayer," and the QI stays a QI "even though that person ultimately fails to acquire identified replacement property" (Reg. §1.1031(k)-1(j)(2)(ii), (iv)). The result: the gain is reported when the QI actually pays the seller, not when the buyer paid the QI.

- **Example 2:** sale in September, replacement plus $20,000 of leftover cash delivered the next March. The $20,000 is reported in the later year.
- **Example 3:** sale December 1, nothing identified, full price released at the end of the identification period in January. The whole gain is reported in the later year.
- **Example 5:** board minutes authorizing the exchange and a clean exchange agreement showed bona fide intent, even though the plan was dropped later.
- **Seller financing through the QI:** a buyer's note received through the QI is treated as the buyer's own note, so it can stay on the installment method ((j)(2)(iii); Reg. §1.1031(b)-2(b) for simultaneous exchanges). That is the buyer's credit, not a structured sale.

What (j)(2) does not do

- **It is timing only.** Relief ends at the earlier of the seller's unrestricted right to the funds or the end of the exchange period ((j)(2)(ii)(A)-(B)). The QI cannot hold the money longer to spread the tax.
- **It moves gain into the next year only when the release falls there.** For a calendar-year seller, day 45 lands in January for a sale on or after November 17, and day 180 lands in January for a sale on or after July 5. For a sale after about October 17, the unextended return due date comes before day 180; extend the return or the exchange period ends on the due date (§1031(a)(3)).
- **It does not apply without bona fide intent** ((j)(2)(iv)), or if the property sold was not held for business or investment ((j)(2)(v)).
- **It does not move recapture or debt relief.** Recapture income (§1245, and §1250 ordinary income) is recognized in the year of sale even if the cash arrives the next year (§453(i)), so the seller may owe tax before the QI releases anything. Net debt relief is treated as money received when the property is trans-

ferred (§1031(d)); (j)(2) governs only what the QI pays out later. Earnest money released to the seller outside the exchange is boot too.

- **It does not turn QI money into a structured sale** (Section 3). The seller may elect out of the installment method if year one is better (§453(d)).

5. Decision Chart: What to Do With Expected Boot

Use this the day you learn the numbers. The seller's CPA confirms the tax; the seller's attorney drafts.

What you see	First question	Keep it in the exchange	If the seller wants it out	Deadline
Cash left over (trade-down, or seller wants cash)	"Do you want this money now, over time, or reinvested?"	Buy up, or identify an added property or a Delaware statutory trust interest by day 45 as replacement property	**Structured installment sale** for the part wanted over time; cash at closing for the part needed now	Purchase agreement and QI carve-out **before closing**
Mortgage boot (less debt on the replacement)	"Will the replacement carry at least as much debt?"	Take on replacement debt, or add outside cash (cash paid in offsets debt relieved)	A structured sale does **not** cure mortgage boot; plan to pay the tax	Before the replacement closes
Cost-segregated building	"Was a cost segregation study done?"	Little room: the §1245(b)(4) limit rarely helps when the replacement is a building; the CPA computes it	§1245 recapture is year-of-sale income even in an installment sale (§453(i)); keep cash for it. Unrecaptured §1250 gain is reported as payments arrive, first (Reg. §1.453-12)	Before closing
Seller wants income for life or a fixed number of years	"Are you buying again, or are you done?"	Exchange the part that will be reinvested	Structured slice sized to the income need; CPA runs both paths	**Before closing**
Replacement may not be found	"What happens if day 45 comes and nothing fits?"	Identify backups under the three-property or 200% rule (Reg. §1.1031(k)-1(c)(4))	Decide the structured slice before closing; after closing only (j)(2) timing remains	**Before closing**
Exchange already failed, money at the QI	"When will the funds be released?"	Not available	(j)(2): gain reported when received, on the release date the (g)(6) terms of the agreement set; the CPA plans around it and decides on §453(d)	Release date set by (g)(6)
Boot is small	"Is it worth a structure?"	Usually reinvest it or pay the tax	Programs set minimums; below them, a structure does not fit	n/a
Large structured amount	"Over $5 million outstanding at year end?"	n/a	§453A interest charge on the excess; size it with the CPA	Before closing

> **The one question:** "Are you buying again, or are you done?" Asked before closing, it routes every seller to the right row.

Too late, and what is left: once escrow has sent the buyer's money to the QI, the seller can complete the exchange, receive the funds when (g)(6) allows and use the (j)(2) timing rule, or pay the tax. A Delaware statutory trust interest already acquired completes that part of the exchange; selling it later is a new taxable sale of replacement property.

6. State Notes

Everything above is federal law. Each state then decides how it taxes the recognized gain, whether it follows the federal installment method, and what must be withheld. The property's state may tax the gain even if the seller lives elsewhere. Confirm each deal with a CPA in the relevant state.

California, as an example of how much a state can add (FTB Form 593 and FTB 3840 instructions, 2025):

- **Withholding.** Real estate withholding generally applies when California real property is sold (R&TC §18662), and a QI that receives and disburses the proceeds is a real estate escrow person. In a deferred exchange the initial transfer is exempt, but the **QI must withhold** if the seller receives more than $1,500 of money or other property (**boot**), and must withhold 3⅓% of the **sales price** if the exchange fails. When boot or a failed exchange is paid out in the year after the sale, the instructions say to use the forms for the year of payment, "since the seller/transferor will be able to use installment sale reporting for the gain."
- **Installment payments.** For an installment sale, 3⅓% of the down payment is withheld in escrow, and the buyer must withhold on the principal portion of each later payment unless the FTB approves an election out. In a structured sale, the assignment company, not the buyer, makes the later payments, so the documents should say who computes and remits.
- **Out-of-state replacement property.** A California property exchanged for property outside California requires an annual information return, FTB 3840, each year, generally until the California-sourced deferred gain is recognized (R&TC §18032). Sellers moving their investment out of state should hear that before they choose.

Other states have their own conformity, withholding and tracking rules. This brief does not list them; the seller's CPA confirms the state answer before closing.

7. Win Back the Exchanges You Lost

Your old files hold exchanges that never opened, and part of each one can still be saved. Some clients called about an exchange and never signed. Some opened one, then walked because they wanted cash out, or did not want another property to manage. Hans's line for them: "**I save the part of the deal you'd lose.**" The exchange stays an exchange, you keep your fee, and the part the replacement property will not place gets its own plan. Hans does not compete with exchanges; most of these files are exchanges plus a carve-out, or a smaller exchange.

What is and is not possible, said plainly.

- **Possible:** a seller with a sale that has **not closed** decides before closing that part of the price will not be reinvested. The purchase agreement and the exchange agreement are written so the buyer pays that part at closing, directly to an assignment company, in a structured installment sale (Section 3). The rest goes to you as exchange funds, with your fee and your hold of the money unchanged.
- **Too late:** once the buyer's money has reached the QI, there is nothing for a structured sale to assign, and Hans has found no authority that lets one be built on exchange funds afterward (Section 3). No work-around exists, and he does not offer one. If a file closed into your account, the opportunity is the client's **next** sale, or another property they own.
- **Not an exchange:** a client who wants out entirely and wants no replacement is not an exchange. Hans does not pitch that to you and you do not earn a fee on it. Say so.

You do not give tax advice. You can say what the exchange agreement covers and that the leftover has a plan. The numbers go to Hans, the seller's CPA and the seller's attorney.

The 30-minute pull

1. **Minutes 0 to 10: pull the list.** Every exchange inquiry, quote and opened-then-dropped file from the last 24 months. Search your notes for: *cash out, boot, keep some, smaller, trade down, don't want to manage, tired of tenants, no replacement, can't find, 45 days, loan, new debt, walked.*
2. **Minutes 10 to 20: code each one.** Use the table below.
3. **Minutes 20 to 25: check the property.** Is the old property still unsold or under contract, did the client buy or sell something since, or do they own another property they may sell? Skip it if it closed through your account. Mark the file.
4. **Minutes 25 to 30: pick ten.** Files with a sale that has not closed, or a client with another property to sell, go first.

Code	Why it was lost	What was really going on	Can a carve-out help?
C	Wanted cash out	Cash boot is taxed in the year of sale (Section 2)	Yes: structure the cash part before closing; the rest stays in the exchange
M	Did not want another property to manage	The replacement was the deal-killer	Sometimes: a smaller exchange plus a structured slice; the seller's advisers decide the replacement
T	Trading down	The leftover became boot	Yes
D	Could not replace the debt, or the new loan cost too much	Mortgage boot, or a loan at today's rate	Sometimes: Hans runs the exchange and the carve-out side by side
N	Could not find a replacement in time	The 45 days ran out	Plan B, written in before closing

Code	Why it was lost	What was really going on	Can a carve-out help?
W	Wanted out entirely	No replacement wanted	No: not an exchange
O	Other	Deal problem	No
S	Closed through your account	Funds already at the QI	Too late; ask about the next sale

The lines

To the old client (call): "Hi [Name], it's [you] at [QI]. I was going through my files and saw we never opened the exchange on [the property]. Do you still own it, or is there another property you are thinking of selling?"

If yes: "A lot of people we talk to want to keep part of the cash, or do not want another property to manage. There is someone who works on the part of the price the exchange will not place, so the rest can still go into a replacement. It has to be set up before closing. Would you want an introduction?"

Voicemail: "Hi [Name], it's [you] at [QI], about [the property]. If you are selling and want to keep some of the cash, there is a way to plan for that before closing and still use an exchange for the rest. Call me at [number]."

Text (only with consent): "Hi [Name], it's [you] at [QI]. If you are selling [the property] and want some cash out, there is a way to plan for it before closing and still exchange the rest. Want a name? Reply STOP to opt out."

Email: *Subject: [the property]* "[Name], we spoke about an exchange on [the property] and it did not go forward. If you are selling now, and want to keep some of the cash or buy something smaller, there is a way to plan for that before closing. It has to be set up before the sale closes. If you would like an introduction, reply with a good time this week." Sign it with your company address and an unsubscribe line.

To the client's agent or CPA (call or email): "My client [Name] looked at an exchange on [the property]. Part of the price may not go into a replacement. If the sale has not closed, Hans Goldstein, an enrolled agent admitted to practice before the IRS and a licensed insurance agent, can show the exchange, the cash part and a structured slice side by side. Would you want the introduction? It has to be set up before closing."

The cadence: Day 1, call; voicemail if no answer. Day 2, email, or a text with consent. Day 7, call again. Day 21, one last email: "Should I close your file?" Then every six months, or when something changes. Stop at any "no."

When they push back

- "**My CPA said do the full exchange.**" "Good. If the exchange places everything, that is the answer, and Hans says so. This is for the part it does not place."
- "**I'll just borrow against it.**" "That can work, and a CPA should run it. Hans shows it next to the other choices."
- "**The sale already closed.**" "Then it is the exchange itself now. If you sell again, call me before you sign the contract."
- "**What will I save?**" "That is for your CPA and Hans, on your numbers. I do not want to guess."

Calling and texting rules (not legal advice): Scrub every list against the National Do Not Call Registry and your own do-not-call list. A number on the Registry needs written permission or an established business relationship: a transaction in the last 18 months, or an inquiry in the last 3 months (16 CFR 310.2, 310.4). Many 24-month inquiries are outside both. Text only people who agreed. Honor every "stop" at once. Follow your own company's rules.

Rules that keep you clean: you give no tax or legal advice and do not estimate anyone's tax; you hold, release and direct exchange funds only as your exchange agreement says; you sign no structured-sale documents; no referral fee is paid or accepted, in either direction; send the deal facts (Section 8) only with the client's OK.

The tracking sheet

One line per file. Codes: C cash out, M no new property, T trade-down, D debt, N no replacement found, W wanted out, O other, S closed through you. Client details stay with you.

Client	Property	Code	Sale closed?	Other property?	Line used	Intro made?	Next date

DO THIS NOW:

- [ ] Block 30 minutes. Pull every exchange inquiry and dropped file from the last 24 months.
- [ ] Code each one, and mark any that closed through your account as S.
- [ ] Call five tomorrow, in one block, with the call line above.
- [ ] Save 213-414-2808 as "Hans Goldstein, EA".

8. The Estate Layer: Exchange Clients Over the Estate-Tax Line

Why a QI should know this. An exchange fixes the income tax on the property. For a client worth more than $15,000,000 ($30,000,000 for a couple), it does nothing about the 40% estate tax above that line. You do not advise on it. You can tell the client that the boot, or the whole sale if the client is done, is also where an estate plan can be paid for, and that the answer has to be set up before closing.

The ceiling, in one example.

Frank and Diane, both 68, Texas, worth $45,000,000	Same sale for cash, no suspended losses	Installment sale with suspended losses (the extreme case)
The sale	$10,000,000 building, basis $2,000,000, gain $8,000,000	Same building, 5-year note at 4.5%, $2,000,000 of principal a year
Suspended passive losses (Form 8582)	None	$10,500,000, freed in step with the gain (§469(g)(3))
Federal income tax on the sale	about $2,054,000	**$0 on $11,350,000 received**
Estate tax at the second death ($45M less the $30M couple's line, at 40%)	$6,000,000	$6,000,000, paid by a $6,000,000 survivorship policy in an ILIT, funded by about $90,000 a year of gifts from the payments

The idea in four sentences: the building is sold on a 5-year installment note at 4.5%. Each year the freed losses cover the gain and the interest. The payments (not the note itself) are gifted, about $90,000 a year, to an irrevocable life insurance trust. The trust's policy pays the estate tax, outside the estate (§§2042, 101(a)). Money the IRS never got pays for money the IRS never gets.

Yes, this is an extreme example. Most people get part of it. It needs suspended losses about 1.3 times the gain (enough to cover the interest too), a short note, no state income or estate tax, a policy the owners can qualify for, and a fully taxable sale of the whole activity. Losses absorb only passive gain; raw land held for investment is not passive. Interest in each payment is still taxed. Coupons that cover half the gain cut the tax on the sale roughly in half, and a smaller policy covers part of the estate tax. The $90,000 premium is an assumption for illustration, not a quote.

The line only keeps up with inflation. The exemption is indexed, roughly 2.5% a year from 2027. A married couple, age 60 today, has a line of $30,000,000 that grows to about **$62.9M by age 90**. A couple worth $15M today growing 6% reaches about **$86.2M** and owes about **$9.3M** of federal estate tax; growing 8%, about **$150.9M** and **$35.2M** (future dollars; current law, steady growth, no spending; Waterfall Strategy model, October 2026). The client who says "we are under $30 million" may only be saying "today."

Where the 1031 fits. A client who exchanges most of the price and takes the boot as an installment slice sized to the losses keeps the exchange, keeps the step-up on the replacement real estate, and has tax-light cash to pay premiums. Whether it fits comes down to net worth, growth, health and the losses, and the client's CPA and estate attorney decide.

ILIT or an irrevocable real-estate trust? Clients ask. The two do different jobs.

	ILIT (trust owns a life insurance policy)	Irrevocable real-estate trust (gift, or sale to a grantor trust)
Step-up at death	**Kept** on the real estate the owner still holds	**Lost.** Heirs take the old basis and the deferred gain (Rev. Rul. 2023-2)
Suspended losses	Still the owner's to use on a sale	Usually stuck with the property; a gift does not free them (§469(j)(6))
Control	Owner keeps the buildings, loans and decisions	A trustee controls the property
Lenders and deeds	Nothing changes	Deeds change; a due-on-sale clause may need lender consent
Insurability	Owner must qualify for the policy	Nearly anyone can use it
Biggest risk	Policy lapses if premiums stop; an existing policy transferred in is pulled back if death comes within 3 years (§2035)	Low-basis property and an income tax bill the heirs inherit

The ILIT fits an owner over the line (or growing toward it) who wants to keep real estate and its step-up and has losses to cash in. A real-estate trust fits high-basis, fast-growing property or an uninsurable owner ready to give up control. Many large estates use both.

Illustration on assumed facts, not tax, legal or investment advice. Hans is a licensed insurance agent and may earn a commission on a policy or an installment sale (see Disclosures). Have the client's CPA and estate attorney run the numbers.

9. Working With Hans

What to send (with the seller's permission)

Send what you already have; Hans gets the rest from the seller and the seller's CPA.

☐ Property: state, type, how long held, held for business or investment

☐ Contract price, expected closing date, and whether the purchase agreement is signed (an amendment may still be possible)

☐ Loan payoff on the property sold

☐ Seller's adjusted basis and total depreciation taken, from the CPA or the last return (Hans asks; he does not estimate it), and whether a cost segregation study was done

☐ Replacement plan: identified or not, target price, planned new debt

☐ Expected boot, by type (cash, mortgage, other property), and what the seller wants that money to do: spend now, income over time, or reinvest

☐ Day 45 and day 180 dates, and whether the exchange agreement is signed

☐ Who sells (individual, trust, LLC, partnership; partners who want different outcomes) and where the seller lives

☐ Any related party on either side

☐ The seller's CPA and attorney, and whether the seller has agreed to an introduction

How the referral works

- **The QI introduces; Hans does the rest.** Hans runs a side-by-side for the seller and the seller's CPA: full exchange, exchange plus cash boot, exchange plus a structured slice, with federal layers and the state shown separately.

- **No pressure.** If the exchange places everything, Hans says so and steps back. If the seller decides against a structure, nothing changes for the exchange.
- **The QI stays in charge of the exchange.** Hans never asks a QI to hold, release or direct exchange funds, or to sign or approve the structured sale documents. The QI's exchange agreement simply covers the funds it receives; whether to acknowledge anything more is the QI's own call.
- **Counsel and CPA lead.** The seller's attorney drafts; the seller's CPA owns the return. Hans does not contact the buyer's side without the seller's broker and counsel.
- **No referral fee** is paid or accepted, in either direction.

Closing checklist: what varies by payer (confirm with the payer). (1) Payee at death: some payers allow any named payee (a trust or entity may need home-office approval); others pay the estate unless a trust is set up. A will does not avoid California probate (small-estate affidavit only if the gross California estate outside trusts and joint title is $208,850 or less, Prob. Code §§13050, 13100). Workarounds: a revocable trust established before closing, or the selling LLC or the seller's single-member LLC as payee, where the payer permits; the LLC interest still needs a succession plan. (2) Tax forms: some payers require W-9 + W-4P and issue Form 1099-B; others W-9 only and no information return. The seller reports on Form 6252 either way. (3) Some payers require their own purchase-agreement addendum, which the seller's counsel coordinates with the exchange agreement's carve-out. (4) Disclosure wording: "paid by the insurer, by commission or fee, when a structure is placed." Beneficiary specifics: confirm with the payer.

Disclosures

Who he is. Hans Goldstein publishes tax education as **Hans Goldstein: Tax & Exit Planning**. He is an Enrolled Agent (EA), admitted to practice before the Internal Revenue Service. He is not an attorney, CPA or registered investment adviser.

Insurance and compensation. Annuity placement is insurance, offered through **Goldstein & Co. LLC dba Goldstein Insurance Services**, CA insurance license #4273294 (Hans Goldstein), firm license #6016830, only in states where licensed. When an annuity-funded structured sale closes, the issuing life insurer pays a one-time commission to the placing brokerage, which pays Hans a share; it is built into the annuity's pricing. Hans earns nothing on an exchange or a cash sale. The seller can ask for his compensation estimate in writing before deciding.

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General education on federal and selected state tax rules as of October 2026, checked against primary sources (statute, Treasury regulations, IRS and California FTB forms and instructions). Not legal, tax or investment advice and not a tax opinion. No IRS ruling approves the assignment structure used in a structured installment sale. Insurance products, including annuities, are offered only through Goldstein & Co. LLC dba Goldstein Insurance Services (CA lic. 4273294, firm lic. 6016830), and only in states where licensed. Tax education is published by Hans Goldstein: Tax & Exit Planning. Hans Goldstein is an Enrolled Agent (EA), admitted to practice before the Internal Revenue Service, and is not an attorney or CPA; Qualified intermediaries do not give tax or legal advice to exchangers; this brief is meant to help you spot the issue and send it to the right people.