



1031 Exchange 45-Day Deadline: Extensions Not Permitted; Tax Fraud

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A delayed 1031 exchange can preserve tax deferral only if the taxpayer follows strict timing requirements and identification rules. Among those rules, the 45-calendar day identification deadline is the most challenging of the [exchange due dates](#). It is statutory in origin, detailed in the Treasury Regulations, and applied with no room for error.

This article explains the governing framework under Internal Revenue Code Section 1031(a)(3) and Treasury Regulation section 1.1031(k)-1, with a focus on what must happen during the exchange identification period, what does not qualify, and what happens if the deadline is missed. It also addresses a point that deserves careful treatment: false, backdated, fabricated, or late identification documents can create serious civil and criminal exposure, but a missed deadline by itself is not automatically tax fraud.

Governing Law for the 45-Calendar Day Identification Deadline

Section 1031(a)(3) allows nonrecognition treatment for a [tax-deferred exchange](#) only if two timing requirements are satisfied:

- The replacement property is identified within the [45 calendar days](#) after the sale of the relinquished property closes (i.e., ownership of the replacement property transfers to the buyer).[1]
- Purchase (ownership) of the replacement property is obtained by the taxpayer by the earlier of 180 calendar days after the sale of the relinquished property closes or the due date of the taxpayer's tax return, including extensions.[1]

The Treasury Regulations provide the operational rules. Section 1.1031(k)-1(b)(2)(i) of the Treasury Regulations states that the identification period begins on the date the taxpayer transfers ownership of the relinquished property and ends at midnight on the 45th calendar day after the sale of the relinquished property closes (i.e., ownership is transferred to the buyer).[2]

That 1031 exchange ID deadline is exactly 45-calendar days after the disposition of the relinquished property. If the taxpayer transfers more than one relinquished property on different closing dates as part of the same deferred exchange, the identification period is measured from the earliest relinquished property conveyance date.[3]

What a Valid 45-Day Identification Must Include

A valid identification is not informal. It must satisfy the regulation's written requirements. Under Treasury Regulation Section 1.1031(k)-1(c)(2), replacement property is considered to be identified only if it is:

- Designated as replacement property in a written identification of replacement property notice;
- Signed by the taxpayer or taxpayers; and
- Hand delivered, mailed, faxed, or otherwise delivered to the qualified intermediary before the end of the identification period.[4]

Generally, the identification of replacement property notice must be sent to the 1031 exchange qualified intermediary within the required 45-calendar day ID period.[4]



The Property Must Be Unambiguously Described

The identification must clearly identify one or more replacement properties. Treasury Regulation section 1.1031(k)-1(c)(3) requires that replacement property be unambiguously described in the written ID notice.[5] For real property, that usually means:

- The common property address (e.g., 123 Main Street, City, State, Zip code);
- The specific assessor's parcel number or APN;
- The legal description;
- The metes and bounds description; or
- A specific, distinguishable and identifiable name of the property.[5]

Vague descriptions are not enough. A statement such as "commercial property in Dallas County," "multifamily asset to be selected later," or the condo complex at the following address" is not a reliable path to compliance. If the property is not clearly and specifically described before the ID deadline, the identification will likely fail under federal or state audit.

The Three-Property Rule and 200-Percent Rule

The 1031 regulations allow flexibility, but only within specific defined limits. Under Treasury Regulation section 1.1031(k)-1(c)(4)(i), a taxpayer may identify:

- Up to three replacement properties without regard to value, known as the three-property rule (the limit is on the number of replacement properties identified); or
- Any number of properties so long as the aggregate fair market value of the identified properties does not exceed 200 percent (200%) of the aggregate fair market value (i.e., aggregate of gross sale prices) of all relinquished properties, known as the 200-percent rule (the limit is computed on the total fair market value of the relinquished properties).[6]

These are the most commonly used identification rules in practice. There is also a 95-percent exception, sometimes referred to as the 95% investment requirement, in the regulation, but for most tax-deferred exchanges the practical planning focus remains on the three-property rule and the 200-percent rule.[7]

Revocation is Allowed, But Only Before The ID Deadline

A taxpayer may revoke an identification during the 45-calendar day ID period, but the timing and form matter. Treasury Regulation section 1.1031(k)-1(c)(6) allows a taxpayer to revoke a replacement property identification form at any time before the end of the identification period, provided the revocation is made in a signed written document and delivered to the same person who received the original identification notice.[8] That means the taxpayer may refine or change the identified list of replacement properties during the 45-calendar day ID period. Once the ID deadline passes, however, the ability to cure or revise the identification notice is effectively gone unless limited disaster relief applies.

No Ordinary Extension of the 45-Day Identification Deadline

This point should be stated plainly: taxpayers cannot apply for or obtain an extension of the 45-day identification deadline under ordinary circumstances. The 45-day deadline is fixed by statute and regulation.[1][2] There is no general procedure for requesting more time because financing was delayed, due diligence took longer than expected, inventory was tight, or a seller backed out late in the process.

Tax Return Extension Does Not Help The 45-Day ID Rule

A common misunderstanding is that filing an extension of time to file the taxpayer's tax return also extends the 1031 exchange deadlines. It does not. A tax return extension can affect the 180-calendar day exchange period because the exchange period ends on the earlier of the 180th day or the due date of the return, including extensions.[9] But that rule applies only to the exchange period, not to the 45-day identification period. The identification deadline still ends at midnight on day 45.[2]



What Happens if The 45th Day Due Date Is Missed

If replacement property is not properly identified before the end of the identification period, the deferred exchange fails for tax-deferred treatment.[10] The regulations are direct on this point. If the replacement property is not identified before the end of the identification period, any property later received is treated as property not of like kind for purposes of the deferred exchange rules.[10] In practical terms, missing the deadline means the taxpayer generally has a taxable sale rather than a successful tax-deferred exchange.

Limited Relief in Disaster Situations

Although there is no ordinary extension process, limited relief can apply in exceptional cases. The IRS may extend the 1031 exchange deadlines in connection with federally recognized natural disasters or other catastrophe-based relief (e.g., fires, floods, hurricanes, tornadoes, mudslides, etc.). Those extensions do not arise from taxpayer discretion or private agreement. They depend on formal IRS disaster relief guidance and apply only in the circumstances described by that guidance. Accordingly, practitioners should not assume an extension exists unless specific IRS relief has been issued and clearly covers the exchange.

Tax Fraud, Tax Evasion and Tax Avoidance

A missed deadline is not automatically tax fraud or tax evasion. That distinction matters. However, knowingly backdating, altering, fabricating, or presenting false identification documents, or knowingly assisting that conduct, can create serious exposure to tax fraud. Depending on the facts, that exposure may include:

- Civil fraud penalties under the Internal Revenue Code (or state code);
- Potential criminal tax evasion issues under 26 U.S.C. section 7201; and
- Potential false document or false statement liability under 26 U.S.C. section 7206, including aiding or assisting the preparation or presentation of a false document.[11][12]

The IRS Criminal Investigation Manual explains that section 7201 applies to willful attempts to evade or defeat tax, and that evasion involves deceit, concealment, or efforts to make things appear other than they are.[13] It also explains that section 7206(1) and 7206(2) can apply to false documents and to those who assist in preparing or presenting them.[12]

That said, accuracy is essential. A late identification alone does not establish tax evasion or fraud. Fraud requires knowing falsity, willfulness, and materially false conduct.

Practical Compliance Steps for Taxpayers and Advisors

For sophisticated exchange planning, the best protection is disciplined procedure:

- Calendar the 45th day from the actual transfer date immediately.
- Prepare the identification notice early, not at the deadline.
- Make sure the notice is signed, written, and timely delivered.
- Use a clear legal description or street address for each identified property.
- Confirm compliance with the three-property rule or 200-percent of FMV rule.
- Document delivery to the qualified intermediary.
- If the list changes, revoke and replace it before the deadline in writing.
- Never backdate or “re-create” documents after day 45.

Conclusion

The 45-day identification deadline is one of the strictest requirements in a deferred 1031 exchange. Under IRC section 1031(a)(3) and Treasury Regulation section 1.1031(k)-1, the period begins on the date the relinquished property is transferred and ends at midnight on the 45th calendar day thereafter.[1][2] The identification must be made in a signed written document, often referred to as the identification of replacement property form, delivered to the qualified intermediary, such as [Exeter 1031 Exchange Services, LLC](#), and must unambiguously describe the replacement property.[4][5]



There is no ordinary extension of the deadline. The filing of an extension of time to file a tax return may preserve the full 180-day exchange period, but it does not move the 45-day identification cutoff.[9] If the deadline is missed, tax deferral is generally lost.[10]

The compliance message is simple: meet the deadline, document the identification correctly, and avoid any temptation to fix a late exchange with false paperwork. That is where a failed exchange can become a much more serious tax problem.

Frequently Asked Questions (FAQs)

Q: Can the 45-day identification deadline be extended in a normal 1031 exchange?

A: No. In a standard 1031 exchange, the 45-day identification deadline is a fixed legal (statutory) requirement and cannot be extended under ordinary circumstances. In limited situations, the IRS may provide disaster relief that extends exchange deadlines, but that relief is rare and applies only when specifically announced. If you are close to the deadline, timely written identification is essential.

Q: When does the 45-day identification clock start in a 1031 exchange?

A: The 45-day identification period starts on the date your relinquished property is sold or transferred to the buyer. It does not begin when you enter negotiations, go under contract or begin due diligence. This timing rule is strict, so it is important to track the closing date of the relinquished property sale carefully and prepare your written identification notice as early as possible.

Q: What must a valid 1031 exchange identification notice include?

A: A valid 1031 exchange identification form must meet several basic requirements to protect your tax-deferred exchange treatment. In general, the notice should be:

- Written
- Signed by the taxpayer
- Delivered on time within the 45-day identification period
- Clear enough to identify the specific replacement property without confusion

For real estate, that usually means listing the property in a way that is easy to recognize, such as a street address, legal description, or other clear identifying detail such as metes and bounds. An informal conversation or vague description is not enough. If the notice is not properly prepared and timely delivered, the 1031 exchange will fail.

Q: What happens if you miss the 45-day identification deadline in a 1031 exchange?

A: If you miss the 45-day identification deadline, the exchange will generally lose its tax-deferred treatment. In most cases, that means the transaction is treated as a taxable sale rather than a valid 1031 exchange. Because this deadline is strict and cannot normally be extended, timely written identification of replacement property is critical to protecting your exchange strategy.

Q: Does filing a tax return extension also extend the 45-day identification deadline in a 1031 exchange?

A: No. Filing a tax return extension may help preserve the full 180-day exchange period, but it does not extend the 45-day identification deadline. The 45-day identification period is a separate legal (statutory) requirement and remains fixed. To protect tax-deferred treatment, replacement property must still be properly identified in writing within 45 days of the transfer of the relinquished property.

Q: Does missing the 45-day identification due date automatically mean tax fraud?

A: No. Missing the 45-day identification deadline by itself does not automatically mean tax fraud. In most cases, it just means the 1031 exchange will fail to qualify for tax-deferred exchange treatment. However, knowingly backdating an identification notice, fabricating documents, or presenting false records can create serious civil and criminal tax fraud risks. The safest course is to follow the identification rules exactly, maintain accurate written records, and address any missed deadline with qualified tax and legal advisors promptly.



Citations

- [1] IRC §1031(a)(3).
- [2] Treas. Reg. §1.1031(k)-1(b)(2)(i).
- [3] Treas. Reg. §1.1031(k)-1(b)(2)(iii).
- [4] Treas. Reg. §1.1031(k)-1(c)(2).
- [5] Treas. Reg. §1.1031(k)-1(c)(3).
- [6] Treas. Reg. §1.1031(k)-1(c)(4)(i).
- [7] Treas. Reg. §1.1031(k)-1(c)(4)(ii).
- [8] Treas. Reg. §1.1031(k)-1(c)(6).
- [9] Treas. Reg. §1.1031(k)-1(b)(2)(ii).
- [10] Treas. Reg. §1.1031(k)-1(b)(1).
- [11] 26 U.S.C. §7201.
- [12] 26 U.S.C. §7206(1), (2).
- [13] IRM 9.1.3.3.2 and 9.1.3.3.7.