PART XV: LIMITATION ON LOSS DEDUCTIONS

7911. What are the "at risk" rules with respect to losses?

The "at risk" rules are a group of provisions in the IRC and regulations that limit the current deductibility of "losses" generated by certain tax shelters (and certain other activities) to the amount that the taxpayer actually has "at risk" (i.e., in the economic sense) in the tax shelter. The primary targets of the "at risk" rules are the limited partner and the nonrecourse financing of a limited partner's investment in the shelter (which was once common in all tax shelters); however, the rule also applies to certain corporations and general partners in both limited and general partnerships and to non-leverage risk-limiting devices (e.g., guaranteed repurchase agreements) designed to generate tax deductions in excess of the amount for which the investor actually bears a risk of loss in a shelter.[1]

At-Risk Limits

Any loss that is disallowed because of the at-risk limits is treated as a deduction from the same activity in the next tax year. If losses from an at-risk activity are allowed, they are subject to recapture in later years if the amount at risk is reduced below zero. For these purposes, a loss is the excess of allowable deductions from the activity for the year (including depreciation or amortization allowed or allowable and disregarding the at-risk limits) over income received or accrued from the activity during the year. Income does not include income from the recapture of previous losses.[2]

Other at risk provisions of the IRC limit the availability of the investment tax credit with respect to property acquired for purposes of the tax shelters or other activities described in Q 7912.[3]

7912. To what types of investment activities do the "at risk" rules apply?

The "at risk" rules apply to each of the following activities when engaged in by an individual (including partners and S corporation shareholders) as a trade or business or for the production of income:

...holding, producing, or distributing motion picture films or video tapes;

...farming (including raising, shearing, feeding, caring for, training, or management of animals);

...leasing of depreciable personal property (and certain other "IRC Section 1245" property, which includes both real and personal property and certain other tangible property that is being, or has been depreciated or amortized[4])

1. See Sen. Rep. 94-938, 1976-3 CB (vol. 3) 57, at 83.
2. IRS Publication 925 (2013)
3. See IRC Secs. 49(a)(1), 49(a)(2).
4. IRS Publication 925, Passive Activity and At-Risk Rules.

…exploring for, or exploiting, oil and gas reserves (see Q 7790 to Q 7819);

…exploring, or exploiting, geothermal deposits;

…holding real property (see Q 7745 for effective date and transitional relief rules);

…all other activities engaged in by a taxpayer in carrying on a trade or business or for the production of income.[1] Apparently, if a publicly traded partnership is taxed as a corporation (see Q 7699), the partnership is not subject to the at risk rules unless it is closely-held (generally, more than 50 percent control by five or fewer individuals).[2] For these purposes, a qualified retirement plan described in IRC Section 401(a) as well as a plan providing for the payment of unemployment compensation benefits under IRC Section 501(c)(17) are considered individuals.[3]

7913. Under the at risk rules, how is an individual's "amount at risk" determined?

In the most general terms, an individual is "at risk" to the extent the individual is not protected against the loss of the money or other property contributed to the activity. If the individual borrows the money contributed to the activity, the individual is "at risk" only to the extent he or she is not protected against the loss of the borrowed amount (i.e., to the extent of the individual's personal liability for repayment of such amount).[4] A partner's "amount at risk" is not affected by a loan made to the partnership by any other partner.[5] Payment by a purchaser to the seller for an interest in an activity is treated by the purchaser as a contribution to the activity.[6]

More specifically, an individual has "at risk" in an activity an amount equal to the total of:[7]

1. *The amount of money the individual has contributed to the activity*. If an individual borrows the money contributed to an activity (or, in the case of a limited partnership, the money with which the interest is purchased), the individual is "at risk" only to the extent he or she is personally liable to repay such amounts, or to the extent he or she pledges as security property not used in the activity.[8]

In the case of a partnership, amounts required to be contributed under the partnership agreement are not "at risk" until the contribution is actually made. Similarly, a partner's amount at risk does not include the amount of a note that is payable to the partnership and on which the partner is personally liable until such time as the proceeds are applied to the activity.[9]

1. IRC Secs. 465(c), 464(e).
2. See IRC Sec. 465(a).
3. IRC Sec. 542(a)(2).
4. Prop. Treas. Reg. §1.465-6.
5. Prop. Treas. Reg. §1.465-7.
6. Prop. Treas. Reg. §1.465-22(d).
7. IRC Sec. 465(b).
8. Treas. Reg. §1.465-20; Prop. Treas. Regs. §§1.465-6, 1.465-25.
9. Prop. Treas. Reg. §1.465-22(a).

2. *The individual's tax basis (for determining loss) in any property (other than money) contributed to the activity*. If the individual has borrowed funds to purchase the property contributed to the activity, the individual will be "at risk" with respect to such property only to the extent that he or she would have been "at risk" had the borrowed funds been contributed instead of the purchased property.[1]

The basis of a limited partnership interest did not include the liability created by a limited partner's written obligation (an interest-bearing nonrecourse note) given as part of the purchase price of the interest where it was payable only from, and to the extent of, cash distributions from the production activities of the partnership.[2]

3. *Amounts borrowed in the conduct of the activity for use in the activity to the extent the individual is personally liable for repayment*. If an individual is personally liable for amounts borrowed in the conduct of the activity, the individual is "at risk" to the extent of such amounts regardless of the fact that property used in the activity is also pledged as security for such amounts.[3] The fact that the partnership or other partners are in the chain of liability does not reduce the amount a partner is "at risk" if the partner bears ultimate responsibility.[4] In the case of liabilities on which the individual is initially personally liable (i.e., recourse liabilities), but which after the occurrence of some event or lapse of a period of time will become nonrecourse, the individual is considered "at risk" during the period of recourse liability if (a) the borrowing arrangement was motivated primarily for business reasons and not tax avoidance, and (b) the arrangement is consistent with the normal commercial practice of financing the activity for which the money was borrowed.[5] As to the effect of repayment by the individual of a liability for which he is personally liable, see Proposed Treasury Regulation Section 1.465-24(b).[6]

4. *Amounts borrowed for use in the activity and for which the individual is not personally liable for repayment, but only to the extent the individual pledges property that is not used in the activity as security for repayment*. In this case the individual is "at risk" only to the extent that the amount of the liability does not exceed the fair market value of the pledged property. If the fair market value of the security changes after the loan is made, a redetermination of the amount at risk must be made using the new fair market value.[7] Property will not be treated as security if such property itself is financed (directly or indirectly) by loans secured with property contributed to the activity.[8] If a taxpayer repays a loan for which he or she is personally liable with assets already in the activity, the taxpayer's amount at risk in the activity will be decreased by the adjusted basis[9] of such assets.[10] As to the effect of contributing the security to the activity, see Proposed Treasury Regulation Section 1.465-25.

1. See Prop. Treas. Reg. §1.465-23.
2. Rev. Rul. 1980-235, 1980-35 IRB 7
3. See Let. Rul. 7927007.
4. *Pritchett v. Comm*., 827 F.2d 644, 87-2 USTC ¶9517 (9th Cir. 1987).
5. Prop. Treas. Reg. §1.465-5. See Rev. Rul. 82-123, 1982-1 CB 82; Rev. Rul. 81-283, 1981-2 CB 115.
6. See Prop. Treas. Reg. §1.465-24(b).
7. Prop. Treas. Reg. §1.465-25(a).
8. IRC Sec. 465(b)(2).
9. As defined in Prop. Reg. 1.465-23(b)(1)
10. Treas. Reg. §1.465-22(c)(1).

Notwithstanding the fact that an individual is personally liable (as in (3), above) or has pledged security for borrowed funds (as in (4), above), borrowed amounts cannot (except to the extent provided in future regulations) be considered at risk (1) if they are borrowed from a person who has an interest (other than as a creditor) in the activity, or (2) if they are borrowed from a person who is related to another person (other than the taxpayer) having an interest in the activity.[1]

For purposes of the foregoing rule, a "related" person generally includes the following: members of a family (i.e., an individual and his brothers, sisters, spouse, ancestors, and lineal descendants); a partnership and any partner owning, directly or indirectly, 10 percent of the capital or profits interests in such partnership; two partnerships in which the same persons own, directly or indirectly, more than 10 percent of the capital or profits interest; an individual and a corporation in which such individual owns, directly or indirectly, more than 10 percent in value of the outstanding stock; two corporations that are members of the same controlled group; a grantor and a fiduciary of the same trust; fiduciaries of trusts that have a common grantor; a fiduciary of a trust and the beneficiaries of that trust, or beneficiaries of another trust if both trusts have the same grantor; a fiduciary of a trust and a corporation if more than 10 percent in value of outstanding stock is owned, directly or indirectly, by the trust or by the grantor of the trust; a person and a tax-exempt organization controlled by such person or family of such person; a corporation and a partnership in which the same person owns a more-than-10 percent interest (by value of stock in the case of the corporation and by capital or profits interest in the case of the partnership); two or more S corporations if more than 10 percent of the stock (by value) of each is owned by the same person; an S corporation and a C corporation if more than 10 percent of the stock (by value) is owned by the same person; and an executor of an estate and a beneficiary of such estate (except in the case of a sale or exchange in satisfaction of a pecuniary bequest).[2]

Amounts borrowed from family members or other persons related to the taxpayer may be considered at risk under certain limited circumstances.[3]

An individual is not considered "at risk" with respect to any amount that is protected against loss through guarantees, stop loss agreements, nonrecourse financing (other than qualified nonrecourse financing of real estate described in (5), below), or other similar arrangements.[4] An investor is *not* at risk with respect to a note that may be satisfied by transferring to the creditor property that is derived from the activity if there is no obligation on the part of the investor-borrower to pay the difference should the value of the property transferred be less than the amount of the note.[5]

1. IRC Sec. 465(b)(3).
2. IRC Secs. 465(b)(3)(C), 267(b), 707(b)(1).
3. IRC Sec. 465(b)(3). See General Explanation–TRA '84, pp. 735-736.
4. IRC Sec. 465(b)(4). See S. Rep. 938, 94th Cong., 2d Sess. 49, *reprinted in* 1976-3 CB (vol. 3) 57 at 87. See Rev. Rul. 78-413, 1978-2 CB 167; Rev. Rul. 79-432, 1979-2 CB 289.
5. Rev. Rul. 85-113, 1985-2 CB 150.

5. *Qualified nonrecourse financing with respect to the activity of holding real property*. An investor in real estate (excluding mineral property) is considered at risk with respect to nonrecourse financing if:

(a) no person is personally liable for repayment (except to the extent provided in regulations),

(b) the financing is secured by real property used in the activity,

(c) the financing is borrowed with respect to the activity of holding real property,

(d) the financing is not convertible debt, *and either* (1) the financing is borrowed from a "qualified person" or represents a loan from any federal, state, or local government or instrumentality thereof, or is guaranteed by any federal, state, or local government, *or* (2) the financing is borrowed from a related person upon commercially reasonable terms that are substantially the same terms as loans involving unrelated persons.[1]

A "qualified person" is one who is actively and regularly engaged in the business of lending money and who is *not* (1) related in certain ways to the investor, (2) the one from whom the taxpayer acquired the property (or related to such a person), or (3) a person who receives a fee with respect to the lessor's investment in the real estate (or related to such a person).[2] In the case of a partnership, a partner's share of qualified nonrecourse financing of the partnership is determined on the basis of the partner's share of such liabilities incurred in connection with such financing.[3]

In any case, if a taxpayer engages in a pattern of conduct or utilizes a device that is not within normal business practice or that has the effect of avoiding the "at risk" limitations, the taxpayer's amount at risk may be adjusted to more accurately reflect the amount that is actually at risk. For example, if considering all the facts and circumstances, it appears that an event that results in an increased amount at risk at the close of one year will be accompanied by an event that will decrease the amount at risk after the year ends, these amounts may be disregarded, unless the taxpayer can establish a valid business purpose for the events and establish that the resulting increases and decreases are not a device for avoiding the at risk limitations in the earlier year.[4] The facts and circumstances to be considered include: (1) The length of time between the increase and decrease in the amount at risk; (2) The nature of the activity and deviations from normal business practice in the conduct of that activity; (3)The use of those amounts which increased the amount at risk toward the close of the taxable year; (4) Contractual arrangements between parties to the activity; and (5)The occurrence of unanticipated events which make the decrease in the amount at risk necessary.[5]

1. IRC Sec. 465(b)(6).
2. IRC Secs. 465(b)(6)(D)(i), 49(a)(1)(D)(iv).
3. IRC Sec. 465(b)(6)(C).
4. Prop. Treas. Reg. §1.465-4.
5. Prop. Treas. Reg. §1.465-4(a), Notice 2002-50, 2002-2 CB 98.

A partner's amount at risk is increased by the amount of the partner's share of undistributed partnership income and his or her share of any tax-exempt proceeds.[1] It is reduced by distributions of taxable income and by losses deducted.[2] It is also reduced by nondeductible expenses relating to production of tax-exempt income of the activity.[3]

Planning Point: A partner's ability to deduct partnership losses is subject to three sets of limitations, which are applied in the following order:

1. Under IRC section 704(d), the loss must not exceed the amount of the partner's basis in the partnership interest;

2. The loss is subject to the at-risk rules of IRC section 465, discussed above;

3. The loss is subject to the passive activity rules of IRC section 469.

Losses that do not meet the requirements for any of the three limitations are suspended at that level. Each of the three limitations provides for a carryover of any disallowed loss. Therefore, the three limitations address matters of timing rather than true disallowance.

In addition to the above loss limitations, IRC section 707(b) limits loss recognition on certain sales of property between "persons" and controlled partnerships or between two commonly controlled partnerships.[4]

7914. What "losses" will be disallowed by the at risk rules? May disallowed losses be carried over to other years?

"Loss" is given a special meaning for purposes of applying the at risk limitations. "At risk loss," otherwise known as an IRC Section 465(d) loss, is the excess of the income tax deductions (including deductions normally accorded special treatment, such as tax preferences, short-term loss, long-term loss) attributable to the covered activity *over* the income received or accrued during the year from the activity. (Both deductions and income are determined without regard to the at risk provisions at this point.) Thus, otherwise allowable deductions may be taken freely against income generated by the activity regardless of the taxpayer's amount at risk in the activity. The at risk provisions act only to deny a deduction when the taxpayer attempts to use a loss incurred in the covered activity to offset income received by the taxpayer from a separate source.[5]

Planning Point: A Section 465(d) loss is determined without regard to the amount at risk.[6] Thus, even if the taxpayer has no amount at risk in the activity, deductions are allowable under Section 465 for a taxable year to the extent there is income from the activity in that taxable year.

Example: Before taking into account any gain or loss during the year, the amount that C, a calendar year taxpayer, is at risk in an activity described in IRC Section 465(c)(1) is equal to minus $20,000. During the year, C has deductions of $10,000 allocable to the activity and income of $15,000 from the activity.

1. Prop. Treas. Reg. §1.465-22(c)(1).
2. Prop. Treas. Regs. §§1.465-22(b), 1.465-22(c)(2).
3. Prop. Treas. Reg. §1.465-22(c)(2).
4. IRS Partnership Audit Technique Guide, Chapter Five Loss Limitations (December, 2007)
5. IRC Sec. 465; Prop. Treas. Reg. §1.465-2(a).
6. Prop. Treas. Reg. §1.465-11(c)(1).

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Because the income from the activity exceeds the amount of allocable deductions from the activity, there is no Section 465(d) loss in the year to be disallowed under Section 465(a). Thus, although C has a negative amount at risk, C is permitted to take deductions in the amount of $10,000 for the year.[1]

Losses disallowed because of the at risk rules may be carried forward indefinitely and deducted in future years to the extent that the activity produces net income for that year, or to the extent the taxpayer's amount at risk has been increased by additional contributions, etc. to the activity.[2] However, because "at risk loss" is made up of various deductions (including some normally accorded special tax treatment), the proposed regulations provide ordering rules that allocate the items of deductions between the current and carryover years. Items disallowed in the current tax year will retain their character when treated as deductions in succeeding years.[3]

The proposed regulations provide that when only a portion of "at risk loss" is allowed as a deduction for the tax year, the individual items of deduction making up the "at risk loss" will be allowed in the following order: (1) capital losses are allowed first; (2) all items entering into computation of "IRC Section 1231" property (see Q 7772) come next; (3) deductible items to the extent they are not tax preference items and are not described in (1) or (2) above follow; (4) all items of deduction that are tax preference items not allowed under (1) or (2) above come last. Furthermore, items of deduction described in (4), that are disallowed by reason of the at risk rules must be further subdivided according to the tax year in which they were originally paid or accrued; when such deductions are eventually allowed, those deductions paid or accrued earliest will be allowed first.[4]

Example: A, an individual calendar year taxpayer, is engaged in an activity described in IRC Sec. 465(a) (See Q 7912). At the close of 1977, A is at risk $1,000 in the activity. During 1978, A had $3,000 of income from the activity and $7,500 of deductions allocated to the activity. Of the $7,500 of the deductions, $2,500 are of the type described (3) and $5,000 are of the type described (4). Assuming nothing else has occurred during 1978 to affect A's amount at risk, A will be allowed $4,000 of deductions and $3,500 of deductions will be disallowed. Since A has no deductions described in (1) or (2), the $4,000 of allowed deductions will consist of the entire $2,500 described in (3) and $1,500 of the $5,000 deductions described in (4). The $3,500 deductions disallowed will consist of deductions in (4).[5]

7915. May a limited partner aggregate amounts "at risk" in different tax shelters in order to determine allowable deductions?

No. The IRC requires that a limited partner apply the "at risk" limitations separately with respect to each limited partnership interest owned. The IRC also grants the Treasury Department authority to issue regulations requiring aggregation or separation of activities subject to the at risk rules.[6]

Treasury exercised this authority on June 5, 1979, by publishing a full set of Proposed regulations under IRC Section 465 With respect to the aggregation or separation of activities

1. Prop. Treas. Reg. 1.465-11(c)(2).
2. IRC Sec. 465(a)(2); Prop. Treas. Reg. §1.465-2(b).
3. Prop. Treas. Reg. §1.465-38(b).
4. Prop. Treas. Regs. §§1.465-38(a), 1.465-38(c).
5. Prop. Treas. Reg. §1.465-38(d), Example (1).
6. IRC Sec. 465(c). See General Explanation–TRA '84, p. 735.

for purpose of the at-risk limitations, these proposed regulations provide that "a S corporation shareholder" may aggregate and treat as a single activity the categories of activities listed in the final sentence of the following paragraph. Additionally to the listed activities, in the case of an S corporation, all activities with respect to IRC Section 1245 properties that are leased or held for lease and are placed in service in a tax year of the corporation are treated as a separate activity.[1]

Furthermore, should one of the taxpayer's limited partnerships be engaged in more than one activity covered by the at risk rules (e.g., oil exploration and equipment leasing), the taxpayer is generally required to treat each covered activity as a separate activity for purposes of applying the at risk limitations.[2] However, until otherwise provided, partnerships and S corporations can aggregate activities within each of certain categories for purposes of the at risk rules. The categories within which aggregation is permitted are oil and gas properties, geothermal properties, farms, and films and video tapes.[3]

Planning Point: The "covered activities" mentioned in the third paragraph above were expanded by Section 201 of the '78 Revenue Act to all activities other than real estate.[4]

7916. May an individual's "amount at risk" in an activity be less than zero (i.e., a negative amount)? If so, what are the tax effects of a negative amount at risk?

Although the amount of loss that is allowed as a deduction for the tax year cannot reduce a taxpayer's amount at risk below zero, it is possible to have a negative amount at risk. For example, if a distribution exceeding his amount at risk by $100 is made to the taxpayer, his amount at risk is reduced to a negative $100. (A negative amount at risk may also result when a recourse obligation is changed to nonrecourse, or when a guarantee that relieves the taxpayer of personal liability for a debt goes into effect.)[5]

If a taxpayer's amount at risk falls below zero, he must recognize income to the extent his amount at risk is reduced below zero. An amount equal to the amount included in income is then carried over as a deduction with respect to the activity in the following tax year. In effect, the reduction (by distribution or other event) is treated as preceding the loss deductions previously taken that offset the original amount at risk, and the loss deduction in effect is treated as disallowed and carried over to a subsequent year. However, the amount required to be included in income when the at risk amount falls below zero cannot exceed the aggregate amount of reductions in the amount at risk that have taken place because of losses in prior years, reduced by any amounts included in income in prior years because the amount at risk had fallen below zero.[6]

1. Prop. Treas. Reg. §1.465-44. (Note: The proposed regulations referred to are: §§1.465-1—1.465-7; 1.465-9—1.465-13; 1.465-22—1.465-26; 1.465-38, 1.465-39; 1.465-41—1.465-45; 1.465-66—1.465-69; 1.465-75—1.465-79; and 1.465-95. While these regulations are quite old, they are still on the books and listed as proposed by the IRS.)
2. IRC Sec. 465(c)(2)(A). See Temp. Treas. Reg. §1.465-1T.
3. Notice 89-39, 1989-1 CB 681.
4. Internal Revenue Bulletin 2003-36 (September 8, 2003).
5. See Prop. Treas. Reg. §1.465-3.
6. IRC Sec. 465(e).

7917. Do the "at risk" rules affect an individual's tax basis in a tax shelter limited partnership?

No. The at risk rules and the limitations they impose on the deduction of losses do *not* affect the tax basis of property involved in the covered activity (including the tax basis of a limited interest in a partnership engaged in the covered activity) for purposes of determining gain or loss on disposition, calculating depreciation or depletion, or any other purpose.[1]

7918. What are the "passive loss" rules?

Under the passive loss rules, aggregate losses from "passive" activities (see Q 7919) may generally be deducted in a year only to the extent they do not exceed aggregate income from passive activities in that year; credits from passive activities may be taken against tax liability allocated only to passive activities.[2] (Aggregation is not permitted in the case of certain publicly traded partnerships. See below.) The rules generally apply to losses incurred in tax years beginning after 1986. The rules are intended to prevent losses from passive activities from offsetting salaries, interest, dividends, and income from "active" businesses. They apply to individuals, estates, trusts, closely held C corporations, and personal service corporations.

An *individual* can also deduct a limited amount of losses (and the deduction-equivalent of credits) arising from certain rental real estate activities against nonpassive income. See Q 7929. A *closely held C corporation* (other than a personal service corporation) can deduct its passive activity losses against its net active income (other than its investment, or "portfolio," income) and its passive credits can be applied against its tax liability attributable to its net active income.[3] Generally, a corporation is "closely" held if it has five or fewer individuals who own more than 50 percent of the value of the stock.[4] (for these purposes, certain organizations—including a qualified retirement plan under IRC Section 401(a) and a trust providing for the payment of supplemental unemployment compensation benefits under IRC Section 501(c)(17)—are considered an "individual")[5] A personal service corporation is a corporation the principal activity of which is the performance of personal services and the services of which are substantially performed by employee-owners.[6]

An exception to the passive loss restrictions is applied to certain casualty losses resulting from unusual events such as fire, storm, shipwreck, and earthquake. Losses from such casualties are generally not subject to the passive loss rules.[7] Likewise, passive activity income does not include reimbursements for such losses if (1) the reimbursement is includable in gross income under Treasury Regulation Section 1.165-1(d)(2)(iii) as an amount the taxpayer had deducted in a prior taxable year, and (2) the deduction for the loss was not a passive activity deduction. In other words, both the losses and the reimbursement should be taken into account

1. Prop. Treas. Reg. §1.465-1(e).
2. IRC Sec. 469.
3. IRC Sec. 469(e)(2).
4. IRC Sec. 469(j)(1).
5. IRC Sec. 542(a)(h).
6. IRC Sec. 469(j)(2).
7. Temp. Treas. Reg. §1.469-2T(d)(2), Treas. Reg. §1.469-2(d)(2)(xi).

in the calculation of the partnership's gross income, not its passive activity gross income.[1] The exception does not apply to losses that occur regularly in the conduct of the activity, such as theft losses from shoplifting in a retail store, or accident losses sustained in the operation of a rental car business.[2]

Special restrictions apply to *publicly traded partnerships* under the passive loss rules. The rules are applied separately to items attributable to a publicly traded partnership; thus, income, losses, and credits attributable to the partnership may not be aggregated with other income, losses, and credits of the taxpayer/partner for purposes of the passive loss rules.[3] Net passive loss from a publicly traded partnership will be treated as passive, while net passive income from a publicly traded partnership is to be treated as investment income. See Q 7941.[4] Generally, net passive loss from a publicly traded partnership is carried forward until the partner has additional passive income from the partnership or the partner disposes of the partnership interest. See Q 7927. Also, the $25,000 rental real estate exemption (see Q 7929) is available with respect to a publicly traded partnership only in connection with the low-income housing credit (see Q 7754) and the rehabilitation investment credit. See Q 7761. Furthermore, a taxpayer will not be treated as having disposed of the taxpayer's entire interest in an activity of a publicly-traded partnership until disposition of the entire interest in the partnership. A publicly traded partnership is a partnership that is traded on an established securities market or is readily tradable on a secondary market (or the substantial equivalent thereof).[5] It would seem that if a publicly traded partnership is taxed as a closely held C corporation or any personal service corporation (see Q 7699), the partnership is not a taxpayer subject to the passive loss rules.[6]

Losses and credits disallowed under the passive loss rules may be carried over to offset passive income and the tax attributable to it in later years. See Q 7927. Suspended losses and credits of an activity may also offset the income and tax of that activity when the activity ceases to be passive or there is a change in status of a closely held corporation or personal service corporation. See Q 7928. As to losses allowed upon disposition of an interest in a passive activity, see Q 7927.

The passive loss rules apply to passive losses incurred in tax years beginning after 1986. They do not apply to any loss or credit carried over from a year beginning before 1987.[7] A taxpayer may elect to treat investment interest (see Q 7941) as a passive activity deduction if the interest was carried over from a year prior to 1987 and is attributable to property used in a passive activity after 1986.[8] However, the interest deduction is not treated as being from a pre-enactment interest in a passive activity.[9] This election had to be made by filing an amended return on or before the later of (1) the due date (taking into account any extensions of time to

1. Temp. Treas. Reg. §1.469-2T(c)(7), Treas. Reg. §1.469-2(c)(7)(vi).
2. TD 8290, 1990-1 CB 109.
3. IRC Sec. 469(k)(1).
4. Notice 88-75, 1988-2 CB 386.
5. IRC Sec. 469(k).
6. See IRC Sec. 469(a).
7. TRA '86 Sec. 501(c)(2).
8. TAMRA '88 Sec. 1005(c)(11).
9. Notice 89-36, 1989-1 CB 677.

file obtained by the taxpayer) for filing the income tax return of the taxpayer for the taxpayer's first taxable year beginning after December 31, 1987, or (2) August 15, 1989.[1]

7919. Under the passive loss rules, what is a passive activity?

A passive activity is any activity (see Q 7924 for rules defining an activity) that involves the conduct of a trade or business in which the taxpayer does not "materially participate."[2] The IRC indicates that regulations may define the term "trade or business" to include activities in connection with a trade or business or activities that are engaged in for the production of income under IRC Section 212. The Service has studied this matter.[3] Regulations provide that the Service will treat real property held for the production of income under IRC Section 212 as a trade or business for purposes of the rental real estate with material participation exception (see Q 7929).

The term "passive activity" does not include a working interest in an oil or gas property that the taxpayer holds directly or through an entity that does not limit the liability of the taxpayer with respect to the interest (see Q 7795).[4] It also does not include the activity of trading personal property (e.g., stocks or bonds) on behalf of the owners of interests in the activity.[5]

> *Example*: ABC partnership is a trader of stocks, bonds, and other securities (within the meaning of IRC Section 1236(c)). The capital employed by the partnership in the trading activity consists of amounts contributed by the partners in exchange for their partnership interests, and funds borrowed by the partnership. The partnership derives gross income from the activity in the form of interest, dividends, and capital gains. Under these facts, the partnership is treated as conducting an activity of trading personal property for the account of its partners. Accordingly, the activity is not a passive activity.[6]

Whether an activity is passive or not with regard to a partner or an S corporation shareholder is determined at the level of the partner or shareholder, not at the level of the entity. Such determination is made with regard to the entity's taxable year (not the partner's or shareholder's taxable year).[7] However, if a publicly traded partnership is taxed as a corporation (see Q 7699), the partnership is the taxpayer, and apparently the partnership is not subject to the passive loss rule.[8] In the case of a limited partnership interest in an electing large partnership, all passive loss limitation activities of the partnership are treated as a single passive activity (see Q 7704).

7920. Under the passive loss rules, when do rental activities constitute passive activities?

Except as provided below, a passive activity includes any rental activity, without regard to whether the taxpayer materially participates in the activity.[9] A rental activity is any activity

1. TAMRA '88 Sec. 1005(c)(11; Notice 89-36, 1989-1 CB 6771.
2. IRC Sec. 469(c).
3. TD 8175(II)(A), 1988-1 CB 191.
4. IRC Sec. 469(c)(3).
5. Temp. Treas. Reg. §1.469-1T(e)(6).
6. Temp. Reg. 1.469-1T(e)(6)(iii).
7. Temp. Treas. Regs. §§1.469-2T(e)(1), 1.469-3T(b)(3).
8. See IRC Sec. 469(a).
9. IRC Sec. 469(c)(2).

where payments are principally for the use of tangible property.[1] However, there are a number of exceptions to this rule. An activity is not treated as a rental activity if: (1) the average rental period is less than eight days, (2) the average rental period is less than 31 days and substantial personal services are provided, (3) the rental of the property is incidental to the receipt of personal services or to a nonrental activity, (4) the taxpayer makes the property available on a nonexclusive basis during regular business hours, (5) the taxpayer rents property to a passthrough entity engaged in a nonrental activity, in his capacity as an owner of that entity, or (6) the personal use of a residence that is also rented out exceeds the greater of 14 days or 10 percent of the rental days (see Q 7749).[2]

Planning Point: For purposes of the preceding paragraph, personal services include only services performed by individuals, and do not include services such as services to comply with local permit laws or performed in connection with the improvement or repair of the property. In determining whether personal services provided in connection with making property available for use by customers are significant, all of the relevant facts and circumstances are taken into account. Relevant facts and circumstances include the frequency with which such services are provided, the type and amount of labor required to perform such services, and the value of such services relative to the amount charged for the use of the property.[3]

See Q 7929 for special rules for rental real estate.

7921. When is a taxpayer considered to "materially participate" in an activity for purposes of the passive loss rules?

In general, a taxpayer is considered to *materially participate* in an activity if he is involved in the operations of the activity on a regular, continuous, and substantial basis.[4] The material participation requirement is met by an individual if he satisfies any one of the following five tests: (1) he does substantially all of the work required by the activity, (2) he participates in the activity for more than 500 hours during the year, (3) he participates in the activity for more than 100 hours during the year and meets certain other requirements, (4) he has materially participated in the activity in 5 out of the 10 preceding years (determined without regard to this test), or (5) he has materially participated in the activity, which involves the performance of personal services, in any three preceding years. An individual who is a limited partner is treated as materially participating only if he also owns a general partnership interest, or if he can meet tests (2), (4), or (5).[5]

In determining whether an individual materially participates, the participation of the individual's spouse is considered.[6] Work done in the individual's capacity as an investor is not treated as participation unless the individual is involved in the day-to-day management or operations of the activity. The extent to which an individual participates may be shown by any reasonable means.[7]

1. IRC Sec. 469(j)(8).
2. Temp. Treas. Reg. §1.469-1T(e)(3); IRC Sec. 469(j)(10).
3. Temp. Treas. Reg. 1.46901T(e)(3)(iv).
4. IRC Sec. 469(h)(1).
5. Temp. Treas. Reg. §1.469-5T.
6. IRC Sec. 469(h)(5).
7. Temp. Treas. Reg. §1.469-5T(f).

A closely held C corporation or a personal service corporation is considered to materially participate in an activity if (a) one or more stockholders who owns more than 50 percent (by value) of the outstanding stock of the corporation materially participates *or* (b) if the C corporation (other than a personal service corporation) has an active full time manager throughout the year, at least three full-time nonowner employees whose services are directly related to the business of the corporation, and certain deductions of the business exceed 15 percent of the income for the year.[1]

Whether a trust materially participates in an activity is determined by reference to the persons who conduct the business activity on the trust's behalf (such as its fiduciaries, employees, and agents), not just whether the trustee materially participates in the activity.[2]

7922. How are income and expenses characterized for purposes of the passive loss rules?

Certain income and expenses of a passive activity are not considered passive activity income or expenses in determining passive activity income and loss: income from interest, dividends, annuities, or royalties not derived in the ordinary course of a trade or business; expenses allocable to such income; and gain or loss not derived in the ordinary course of a trade or business that is attributable to the disposition of property either producing such income or held for investment. An interest in a passive activity is not treated as property held for investment. Income from the investment of working capital is not derived in the ordinary course of a trade or business.[3]

Interest deductions attributable to passive activities are subject to limitation under the passive loss rule, not under the investment interest limitation.[4]

In order to prevent taxpayers from defeating the purpose of the passive loss rules by structuring transactions to produce passive income from what are essentially active businesses or portfolio investments, Treasury was given very broad regulatory authority for carrying out the provisions of IRC Section 469. The IRC specifies that regulations may: provide that certain items of gross income will not be taken into account in determining income and loss from an activity, require that net income or gain from a limited partnership or other passive activity not be treated as passive income or loss, and allocate interest expense among activities.[5] In the following instances, part or all of the income from a passive activity may be treated as income that is not from a passive activity: (1) the individual participates in such passive activity for more than 100 hours during the year, (2) less than 30 percent of the property used in a rental activity is depreciable property, (3) there is net interest income from a passive equity-financed lending activity, (4) rental of property developed by the taxpayer commenced within 12 months of disposition of such property, (5) the taxpayer rents property to a trade or business in which

1. IRC Sec. 469(h)(4).
2. *Carter Trust v. Comm.*, 256 F. Supp. 2d 536, 2003-1 USTC ¶50,418 (N.D. Tex. 2003).
3. IRC Sec. 469(e).
4. IRC Sec. 163(d)(4)(D).
5. IRC Sec. 469(l).

the taxpayer materially participates, and (6) the taxpayer acquires certain royalty interests in intangible property previously developed by a passthrough entity.[1]

Special rule for significant participation. An amount of the taxpayer's gross income from each significant participation passive activity for the taxable year equal to a ratable portion of the taxpayer's net passive income from the activity for the year is treated as not from a passive activity if the taxpayer's passive activity gross income from all significant participation passive activities for the year exceeds the taxpayer's passive activity deductions from all such activities for the year. For purposes of this paragraph, the term "significant participation passive activity" means any trade or business activity in which the taxpayer significantly participates for the taxable year but in which he does not materially participate for the year. The terms "significant participation" and "material" participation" are defined in the temporary income tax regulations.[2]

If gain is recognized in a taxable year beginning after 1986 with respect to an activity sold or exchanged before 1987, the gain is treated as passive if the activity would have been passive had the passive loss rule been in effect in the year the activity was sold or exchanged and in all succeeding years.[3]

The Service has issued temporary and proposed regulations that provide complex tracing rules allocating interest expense (other than qualified residence interest) on the basis of the use of the proceeds of the underlying debt.[4] (See Q 7932.) Once allocated, interest on proceeds used to purchase a passive activity is taken into account in determining income or loss from the activity. Characterization of interest on proceeds used to purchase a partnership or S corporation interest depends on whether the activity is passive to the partner or shareholder.[5]

Planning Point: Rules for allocating interest expense for purposes of applying the passive loss limitation of section 469 of the Internal Revenue Code provide that interest expense is generally allocated in the same manner as the debt to which the interest expense relates is allocated. Debt is allocated by tracing disbursements of the debt proceeds to specific expenditures. These interest tracing rules provide that the allocation is not affected by the use of an interest in any property to secure the repayment of the debt or interest.[6]

Income from discharge of indebtedness is generally characterized as income from a passive activity to the extent that the debt is allocated to passive activity expenditures and as income from a nonpassive activity to the extent that, at the time indebtedness is discharged, the debt is not allocated to passive activity expenditures.[7]

7923. What are the self-charged interest rules under the passive loss rules?

Interest income and deductions in connection with loans between a taxpayer and a "passthrough entity" (a partnership or S corporation) in which the taxpayer owns a direct or

1. Temp. Treas. Reg. §1.469-2T(f), Treas. Reg. §1.469-2(f).
2. Temp. Treas. Reg. 1.469-5T
3. TRA '86 Sec. 501(c)(4) as amended by TAMRA '88, Sec. 1005(a)(10).
4. Temp. Treas. Reg. §1.163-8T.
5. Ann. 87-4, 1987-3 IRB 17.
6. Temp. Treas. Reg. 1.163-8T.
7. Rev. Rul. 92-92, 1992-2 CB 103.

indirect interest may be allocated under the following "self-charged interest rules" rather than the rules discussed in Q 7919 to Q7814. An indirect interest means an interest held through one or more passthrough entities.[1]

Taxpayer loans to the entity. The self-charged interest rules apply for a taxable year if: (1) the borrowing entity has deductions for its taxable year for interest charged by persons who own direct or indirect interests in the borrowing entity at any time during the entity's taxable year; (2) the taxpayer owns a direct or indirect interest in the borrowing entity at any time during the entity's taxable year and the taxpayer has gross income for the taxable year from interest charged to the borrowing entity by either the taxpayer or a passthrough entity through which the taxpayer holds an interest in the borrowing entity; and (3) the taxpayer's share of the borrowing entity's self-charged interest deductions includes passive activity deductions.[2]

If these rules apply, the passive activity gross income and passive activity deductions from that activity are determined under the following rules: (1) the applicable percentage of each item of the taxpayer's income for the taxable year from interest charged to the borrowing entity is treated as passive activity gross income from the activity; and (2) the applicable percentage of each deduction for the taxable year for interest expense that is properly allocable to the taxpayer's income from the interest charged to the borrowing entity is treated as a passive activity deduction from the activity.[3]

Interest expense is properly allocable to the taxpayer's income if it is allocated under Temporary Treasury Regulation Section 1.163-8T to an expenditure that: (1) is properly chargeable to a capital account with respect to the investment producing the interest income; or (2) may reasonably be taken into account as a cost of producing the item of interest income.[4]

The applicable percentage is determined by dividing (1) the taxpayer's share for the taxable year of the borrowing entity's self-charged interest deductions that are treated as passive activity deductions from the activity by (2) the greater of: (a) the taxpayer's share for the taxable year of the borrowing entity's aggregate self-charged interest deductions for all activities (regardless of whether the deductions are treated as passive activity deductions); or (b) the taxpayer's aggregate income for the taxable year from interest charged to the borrowing entity for all activities of the borrowing entity.The applicable percentage is determined separately for each activity.[5]

Entity loans to the taxpayer. Similarly, the self-charged interest rules apply for a taxable year if (1) the lending entity has gross income for the entity taxable year from interest charged by the lending entity to persons who own direct or indirect interests in the lending entity at any time during the entity taxable year; (2) the taxpayer owns a direct or indirect interest in the lending entity at any time during the entity's taxable year and has deductions for the taxable year for interest charged by the lending entity to the taxpayer or a passthrough entity through

1. Treas. Reg. §1.469-7.
2. Treas. Reg. §1.469-7(c)(1).
3. Treas. Reg. §1.469-7(c)(2).
4. Treas. Reg. §1.469-7(f).
5. Treas. Reg. §1.469-7(c)(3).

which the taxpayer holds an interest in the lending entity; and (3) the taxpayer's deductions for interest charged by the lending entity include passive activity deductions.[1]

If the rules apply, the passive activity gross income and passive activity deductions from the activity are determined under the following rules: (1) the applicable percentage of the taxpayer's share for the taxable year of each item of the lending entity's self-charged interest income is treated as passive activity gross income from the activity; (2) the "applicable percentage" of the taxpayer's share for the taxable year of each deduction for interest expense that is properly allocable to the lending entity's self-charged interest income is treated as a passive activity deduction from the activity.[2]

Interest expense is properly allocable to the taxpayer's income if it is allocated under Temporary Treasury Regulation Section 1.163-8T to an expenditure that: (1) is properly chargeable to a capital account with respect to the investment producing the interest income; or (2) may reasonably be taken into account as a cost of producing the item of interest income.[3]

The applicable percentage is determined by dividing (1) the taxpayer's deductions for the taxable year for interest charged by the lending entity, to the extent treated as passive activity deductions from the activity, by (2) the greater of: (a) the taxpayer's aggregate deductions for all activities for the taxable year for interest charged by the lending entity (regardless of whether these deductions are treated as passive activity deductions); or (b) the taxpayer's aggregate share for the taxable year of the lending entity's self-charged interest income for all activities of the lending entity. The applicable percentage is determined separately for each activity.[4]

Special rules apply to situations where a loan occurs between identically-owned passthrough entities.[5]

If the taxpayer and the passthrough entity have different taxable years or accounting methods, related interest income and interest deductions may be recognized in different years, possibly with adverse results.[6]

The self-charged interest rules apply to taxable years ending after 1986, unless the passthrough entity makes an election to have the rules not apply. Such an election applies to the taxable year for which the election is made and all subsequent years until the election is revoked. An election can be revoked only with the consent of the IRS.[7]

7924. How is an activity defined for purposes of the passive loss rules?

Regulations allow taxpayers to use a facts-and-circumstances approach to define one or more trade or business activities as a single activity if the activities constitute an appropriate

1. Treas. Reg. §1.469-7(d)(1).
2. Treas. Reg. §1.469-7(d)(2).
3. Treas. Reg. §1.469-7(f).
4. Treas. Reg. §1.469-7(d)(3).
5. Treas. Reg. §1.469-7(e).
6. See Treas. Reg. §1.469-7(h) (Ex. 4).
7. Treas. Reg. §1.469-11(a)(4); Treas. Reg. §1.469-7(g).

economic unit for purposes of IRC Section 469. (In the case of a limited partnership interest in an electing large partnership, all passive loss limitation activities of the partnership are treated as a single passive activity. See Q 7704.) Relevant factors to consider include: (1) similarities and differences in types of businesses; (2) the extent of common control; (3) the extent of common ownership; (4) geographical location; and (5) interdependencies between the activities. There may be more than one reasonable method for grouping activities.[1]

Rental activities may not be grouped with trade or business activities unless either the rental activity is insubstantial in relation to the trade or business activity or vice versa, or ownership interests in the trade and business activity are held in the same proportion as ownership interests in the rental activity.[2] An activity involving the rental of real property and an activity involving the rental of personal property may not be treated as a single activity (unless the personal property is provided in connection with the real property or vice versa).[3]

For activities conducted through partnerships, S corporations, or C corporations subject to the passive loss rules, the entity must first group its activities under the above rules. Individual partners and shareholders may then group those activities with others conducted directly by the individual taxpayer or with activities conducted through other partnerships, S corporations, or C corporations subject to the passive loss rules, under the same rules. However, a shareholder or partner may not treat activities grouped by an entity as separate activities.[4]

> *Example*: Taxpayer B, an individual, is a partner in a business that sells non-food items to grocery stores (partnership L). B also is a partner in a partnership that owns and operates a trucking business (partnership Q). The two partnerships are under common control. The predominant portion of Q's business is transporting goods for L, and Q is the only trucking business in which B is involved. Under this section, B appropriately treats L's wholesale activity and Q's trucking activity as a single activity.

A taxpayer involved as a limited partner or limited entrepreneur in certain activities (generally, holding, producing, or distributing motion picture films or videotapes; farming; equipment leasing; or exploring for, or exploiting oil and gas resources or geothermal resources) may group that activity with another activity only if the two activities are in the same type of business and the grouping is appropriate under the facts-and-circumstances test above.[5]

Once a taxpayer has grouped individual activities under the rules above, he or she may not regroup them in subsequent taxable years unless the original grouping was clearly inappropriate or there is a material change in facts and circumstances making the original grouping clearly inappropriate.[6] The IRS may regroup a taxpayer's activities if any of the activities resulting from the taxpayer's grouping is not an appropriate economic unit and a principal purpose of the taxpayer's grouping (or failure to regroup) is to circumvent the underlying purpose of IRC Section 469.[7]

1. Treas. Reg. §1.469-4(c).
2. Treas. Reg. §1.469-4(d)(1).
3. Treas. Reg. §1.469-4(d)(2).
4. Treas. Reg. §1.469-4(d)(5).
5. Treas. Reg. §1.469-4(d)(3).
6. Treas. Reg. §1.469-4(e).
7. Treas. Reg. §1.469-4(f).

Example: Taxpayers D, E, F, G, and H are doctors who operate separate medical practices. D invested in a tax shelter several years ago that generates passive losses and the other doctors intend to invest in real estate that will generate passive losses. The taxpayers form a partnership to engage in the trade or business of acquiring and operating X-ray equipment. In exchange for equipment contributed to the partnership, the taxpayers receive limited partnership interests. The partnership is managed by a general partner selected by the taxpayers; the taxpayers do not materially participate in its operations. Substantially all of the partnership's services are provided to the taxpayers or their patients, roughly in proportion to the doctors' interests in the partnership. Fees for the partnership's services are set at a level equal to the amounts that would be charged if the partnership were dealing with the taxpayers at arm's length and are expected to assure the partnership a profit. The taxpayers treat the partnership's services as a separate activity from their medical practices and offset the income generated by the partnership against their passive losses.

For each of the taxpayers, the taxpayer's own medical practice and the services provided by the partnership constitute an appropriate economic unit, but the services provided by the partnership do not separately constitute an appropriate economic unit. Moreover, a principal purpose of treating the medical practices and the partnership's services as separate activities is to circumvent the underlying purposes of section 469. Accordingly, the IRS may require the taxpayers to treat their medical practices and their interests in the partnership as a single activity, regardless of whether the separate medical practices are conducted through C corporations subject to section 469, S corporations, partnerships, or sole proprietorships. Additionally, the IRS may assert penalties under IRC section 6662 against the taxpayers in appropriate circumstances.[1]

A taxpayer who disposes of substantially all of an activity may treat the disposed interest as a separate activity, but only if the taxpayer can establish with reasonable certainty both (1) the amount of deductions and credits allocable to that part of the activity for that taxable year under IRC Section 469 and (2) the amount of gross income and any other deductions and credits allocable to that part of the activity for the taxable year.[2]

In general, for the first taxable year ending after May 10, 1992, taxpayers that are not in compliance with the activity grouping rules of Treasury Regulation Section 1.469-4 must regroup their activities under those rules without regard to how the activities were previously grouped. Further, regrouping is permissible for the first taxable year ending after May 10, 1992, even if the taxpayer is already in compliance with the activity grouping rules of Treasury Regulation Section 1.469-4.[3]

For special rules relating to rental real estate in which a taxpayer materially participates, see Q 7929.

Taxable Years Ending After August 9, 1989, and Before May 11, 1992

For taxable years ending after August 9, 1989, and before May 11, 1992, regulations define an activity using a building blocks approach based on (1) rules identifying business and rental operations constituting an undertaking, and (2) rules permitting or requiring aggregation or segregation of certain operations or undertakings.[4]

1. Treas. Reg. 1.469-4(f)(2)
2. Treas. Reg. §1.469-4(g).
3. Treas. Reg. §1.469-11(a)(1), Treas. Reg. §1.469-11(b)(3)(ii).
4. Former Temp. Treas. Reg. §1.469-4T.

7925. How do the passive loss rules and other limitations on the use of credits interact with each other?

The IRC seems to provide that credits must be allowable under the limitations that apply to a particular credit (e.g., the general business credit limitation) before the credit enters into the calculation of the amount of credits attributable to passive activities.[1] Then, if the credit is allowable under the passive credit limitation (i.e., passive credits may offset only tax liability attributable to passive activities) or the $25,000 rental real estate exemption (see Q 7929), the credit would become subject to overall limitations that apply to all credits (e.g., credits may not reduce regular tax liability to less than tentative minimum tax liability). This appears to be consistent with explanations contained in committee reports for TRA '86.[2]

Planning Point: However, temporary regulations seem to provide that a credit must be allowable under the passive loss rules before the credit is taken into consideration under the limitations that apply to a group of credits (e.g., the general business credit limitation).[3]

The reports go on to say that if the credit is otherwise allowable under the passive loss rules (including the $25,000 rental real estate exemption), but is disallowed when aggregated with nonpassive credits because of other limitations (e.g., credits may not reduce regular tax liability to less than tentative minimum tax liability), the passive loss so disallowed becomes a nonpassive credit arising in that year. The treatment of the credit is then determined by the general rules that apply to the credits, including carryover rules, and not under the passive loss rules. While less than clear, the temporary regulations seem to be in accord.[4]

See Q 7926 concerning the interaction of the limitations on the "at risk" rules, the passive loss rules, and the deductibility of losses in excess of basis with respect to investment in a partnership or S corporation.

7926. How is a passive loss treated if the taxpayer is subject to other limitations on loss deductions?

The determination of whether a loss is disallowed under the passive loss rules is made *after* the application of (1) the limitations on the deductibility of losses in excess of basis with respect to investment in a partnership (see Q 7718) or S corporation (see Q 7736), and (2) the "at risk" rule (see Q 7911 to Q 7917). A passive loss that would not be allowed because of the basis limitations or the at risk rules is suspended and carried forward under the basis and/or at risk provisions, not the passive loss rules. The amount becomes subject to the passive loss rules in subsequent years when it would be otherwise allowable under both the basis and at risk limitations.[5]

According to the Senate Finance Committee Report, TRA '86, amounts at risk are reduced even if deductions that would be allowed under the at risk rules are suspended under the passive

1. IRC Sec. 469(d)(2).
2. See Sen. Rep. 99-313, 1986-3 CB (vol. 3) 713, 724 and Conf. Rep. 99-841, 1986-3 CB (vol. 4) 137, 143.
3. Temp. Treas. Reg. §1.469-3T.
4. See Temp. Treas. Reg. §1.469-3T; See also *Sidell v. Commissioner of Internal Revenue*, 225 F.3d 103 (1st Circuit Court of Appeal, September, 22, 2000).
5. Temp. Treas. Reg. §1.469-2T(d).

loss rules. Similarly, basis is reduced if the deduction would be allowed under the at risk rules but is suspended under the passive loss rules. When a taxpayer's amount at risk or basis has been reduced by a deduction not allowed under the passive loss rules, the amount at risk or basis is not reduced again when the deduction becomes allowable under the passive loss rules.[1]

Under the regulations, passive activity deductions do not include: (1) a deduction for an item of expense (other than interest) that is clearly and directly allocable to portfolio income; (2) a deduction allowed under IRC Sections 243, 244, or 245 with respect to any dividend that is not included in passive activity gross income; (3) interest expense (other than expense allocated to a passive activity expenditure and which is neither qualified residence interest nor capitalized); (4) a deduction for a loss from the disposition of property of a type that produces portfolio income; (5) a deduction that is treated as a deduction that is not a passive activity deduction; (6) a deduction for any state, local, or foreign income, war profits, or excess profits tax; (7) a miscellaneous itemized deduction that is subject to partial or total disallowance; or (8) a deduction allowed for a charitable contribution.[2]

7927. May disallowed passive losses and credits be carried over and taken in a later year? How are passive losses and credits treated on the disposition of an interest in a passive activity?

A passive loss or credit disallowed under the passive loss rules in one year may be carried over and taken in a later year in which the taxpayer has passive activity income or tax liability.[3] However, if passive losses (or credits) from a publicly traded partnership (see Q 7699) are carried forward, such losses (or credits) may be offset only by passive income (or tax attributable to passive income) from the same partnership.[4] Special rules apply in the case of a rental real estate activity. See Q 7929.

If a passive activity is disposed of in a fully taxable transaction, losses from the activity will receive *ordinary loss treatment* (i.e., they may generally be used to offset other income of the taxpayer) to the extent that they exceed net income or gain from all passive activities (determined without regard to the losses just discussed) for the year. This treatment applies both to current year losses as well as losses carried over from previous years, with respect to the activity disposed of. The IRS has been given the authority to issue regulations that will take income or gain from previous years into account to prevent the misuse of this rule.[5] However, a taxpayer will not be treated as having disposed of the entire interest in an activity of a publicly-traded partnership (see Q 7699) until the taxpayer disposes of his or her entire interest in the partnership.[6]

For the purpose of determining gain or loss from a disposition of property, the taxpayer may elect to increase the basis of the property immediately before disposition by an amount equal to

1. Sen. Rep. 99-313, 1986-3 CB (vol. 3) 713, 723.
2. Temp. Treas. Reg. §1.469-2T(d)(2).
3. IRC Sec. 469(b).
4. IRC Sec. 469(k)(1).
5. IRC Sec. 469(g)(1).
6. IRC Sec. 469(k)(3).

the part of any unused credit that reduced the basis of the property for the year the credit arose.[1] If the passive interest disposed of is sold under the installment method (see Q 586), previously disallowed passive losses are allowed as a deduction in the same proportion as gain recognized for the year bears to gross profit from the sale.[2]

If the disposition of the passive interest is to a related person in an otherwise fully taxable transaction, suspended losses remain with the taxpayer and may continue to offset other passive income of the taxpayer. The taxpayer is considered to have disposed of his or her interest in a transaction described in the preceding paragraph when the related party later disposes of the passive interest in a taxable transaction to a party unrelated to the taxpayer.[3]

If the disposition is by death, the carried over losses may be deducted only to the extent the losses exceed the step-up in basis (see Q 598) of the interest in the passive activity.[4] If the disposition is by gift, the losses are not deductible. Instead, the donor's basis just before the transfer is increased by the amount of the disallowed losses allocable to the interest.[5] However, where a donor makes a gift of less than his or her entire interest, a portion of the carried over losses is allocated to the gift and increases the donor's basis and a portion of the losses continue to be treated as passive losses attributable to the interest that the donor has retained.[6]

If a trust or estate distributes an interest in a passive activity, the basis of such interest immediately before the distribution is increased by the amount of passive losses allocable to the interest, and such losses are never deductible.[7]

The rules relating to the treatment of suspended losses and credits when the activity is disposed of require that losses and credits carried over from year to year be traceable to a particular activity. Thus, where there are losses or credits from two or more activities which, in the aggregate, exceed passive gains from other passive activities, the amount disallowed and carried over must be allocated among the different activities and between capital and ordinary loss. Disallowed passive losses are allocated among activities in proportion to the loss from each activity. The disallowed loss allocated to an activity is then allocated ratably among deductions attributable to the activity. Disallowed credits are allocated ratably among all credits attributable to passive activities.

If all or any portion of the taxpayer's passive activity credit is disallowed for the taxable year, a ratable portion of each credit from each passive activity of the taxpayer is disallowed. For these purposes, the ratable portion of a credit of a taxpayer is computed by multiplying the portion of the taxpayer's passive activity credit that is disallowed for the taxable year by the fraction obtained by dividing the amount of the credit by the sum of all of the taxpayer's credits from passive activities for the taxable year.[8]

1. IRC Sec. 469(j)(9).
2. IRC Sec. 469(g)(3).
3. IRC Sec. 469(g)(1)(B).
4. IRC Sec. 469(g)(2).
5. IRC Sec. 469(j)(6).
6. Sen. Rep. 99-313, 1986-3 CB (vol. 3) 713, 726.
7. IRC Sec. 469(j)(12).
8. Temp. Treas. Reg. §1.469-1T(f)(3).

In identifying the deductions or credits that are disallowed, the taxpayer need account separately only for those items that if separately taken into account by the taxpayer would result in an income tax liability different from that which would result if such deduction were not taken into account separately. Deductions arising from a rental real estate activity, or in connection with a capital or IRC Section 1231 asset, must be accounted for separately. Credits (other than the low-income housing or rehabilitation credits) arising from a rental real estate activity must also be accounted for separately.[1]

7928. How are suspended passive losses treated when an activity ceases to be passive or if a closely held C corporation or personal service corporation changes status?

If an activity ceases to be passive (e.g., because the taxpayer begins to participate materially), its unused losses (or credits) from prior years continue to be passive, but may be used against the income (and tax liability) of that activity. If there is a change in the status of a closely held C corporation or personal service corporation, its suspended losses from prior years will continue to be treated as if the status of the corporation had not changed.[2]

Planning Point: As a general rule, an individual will be treated as materially participating in an activity for the taxable year if, and only if, he or she participates in the activity for more than 500 hours during the year, or if his or her participation satisfies one of six other requirements in Temporary Treasury Regulation Section 1.469-5T(a). For instance, the individual's participation will be deemed material if, based on all of the facts and circumstances, the individual participates in the activity on a regular, continuous, and substantial basis during such year.[3]

For an explanation of losses allowed upon disposition of an interest in a former passive activity, see Q 7927.

7929. What amount of passive losses (and the deduction-equivalent of credits) from rental real estate activities may an individual deduct against nonpassive income?

First, while few investors in real estate syndications will qualify for this exception, it should be noted that certain rental real estate activities may not be subject to the passive loss rules. For tax years beginning after 1993, a rental real estate activity of a taxpayer is not automatically considered a rental activity subject to the passive loss rules for a year, but only if during the year (1) more than one-half of the personal services performed by the taxpayer in trades or businesses during the year is in real property trades or businesses in which the taxpayer materially participates, and (2) the taxpayer performs more than 750 hours of service during the year in the real property trades or businesses. See Q 7930.

An *individual* can deduct losses (and the deduction-equivalent of credits) attributable to all rental real estate activities subject to the passive loss rules in which he or she has "actively participated" (and has at least a 10 percent interest in the activity at all times during the year)

1. Temp. Treas. Reg. §1.469-1T(f).
2. IRC Sec. 469(f).
3. Temp. Treas. Reg. 1.469-5T(a)(7)

against as much as $25,000 of nonpassive income.[1] The $25,000 amount is reduced by fifty cents for each dollar by which the individual's adjusted gross income exceeds $100,000.[2] *Adjusted gross income*, for this purpose, does not include Social Security or railroad retirement benefits, is not reduced by contributions to an IRA, any passive loss or loss from rental real estate with material participation, deductions for student loan interest, deductions for qualified tuition and related expenses (see Q 7952), or deductions for production of income, and is not reduced by the exclusions for savings bonds interest used to pay higher education expenses (see Q 7666) or certain adoption assistance programs.[3]

The rules above are applied differently to deductions of amounts equivalent to the low income housing credit (see Q 7754) or the rehabilitation credit (see Q 7761). First, the requirement that the individual own at least a 10 percent interest in the activity and "actively participate" does not apply to these deductions.[4] Furthermore, with respect to the rehabilitation credit, the $25,000 amount does not begin to phase out until the individual has adjusted gross income of $200,000 instead of $100,000.[5] With respect to property placed in service after 1989, there is no phase-out of the $25,000 rental real estate exemption with respect to the low-income housing tax credit.[6] For property placed in service before 1990, the $25,000 exemption amount for rental real estate with respect to the low-income housing tax credit did not begin to phase out until a taxpayer had income in excess of $200,000.

The $25,000 amount is not available to married individuals who file separately but who did not live apart at all times during the year. For married individuals who file separately and did live apart at all times during the year, the $25,000, $100,000, and $200,000 amounts are cut in half (i.e., $12,500, $50,000, and $100,000).[7] For up to two years after a decedent's death, an *estate* may offset up to $25,000 (subject to the phase-out rule) of nonpassive income with passive losses and credits from a rental real estate activity in which the decedent actively participated before his or her death. The estate's $25,000 amount is reduced by the rental real estate exemption amount that would be allowable to the surviving spouse calculated as if the spouse were not subject to the phase-out rule.[8]

The $25,000 rental real estate exemption is available with respect to a publicly traded partnership subject to the passive loss rule (see Q 7918) only to the extent that the low-income housing credit and the rehabilitation credit exceed the regular tax liability attributable to income from the partnership.[9]

The term "publicly traded partnership" means any partnership if (a) interests in such partnership are traded on an established securities market, or (b) interests in such partnership are readily tradable on a secondary market (or the substantial equivalent thereof).[10]

1. IRC Sec. 469(i).
2. IRC Sec. 469(i)(3)(A).
3. IRC Sec. 469(i)(3)(F).
4. IRC Sec. 469(i)(6)(B).
5. IRC Sec. 469(i)(3)(B).
6. IRC Sec. 469(i)(3)(D).
7. IRC Sec. 469(i)(5).
8. IRC Sec. 469(i)(4).
9. IRC Sec. 469(k).
10. IRC Sec. 469(k)(2).

Before passive losses from a rental real estate activity can be used to offset nonpassive income, they must first be netted against other real estate activities in which the taxpayer actively participates, then against other passive income. Any remaining losses may be applied against up to $25,000 of nonpassive income. If losses are otherwise deductible under the $25,000 rule, but the taxpayer cannot deduct all or part of them in the current year because passive losses exceed the taxpayer's nonpassive income, the excess losses are treated as a net operating loss arising in that year which can be carried back and forward in accordance with the net operating loss rules.[1] With regard to the interaction of the passive loss rule with other limitations on the use of credits or the deductibility of losses, see Q 7925 and Q 7926.

An individual must *actively participate* in the rental real estate activity and have at least a 10 percent interest in the activity at all times during the year in order to take advantage of the $25,000 exemption amount (unless the individual is claiming the deduction equivalent of the low income housing or rehabilitation credit, as noted above). Except as provided in regulations, a limited partner is not treated as actively participating with respect to a limited partnership interest.[2] A taxpayer can meet the active participation requirement by making management decisions, such as "approving new tenants, deciding on rental terms, approving capital or repair expenditures, and other similar decisions," and arranging for others to provide services such as repairs. Regular, continuous, and substantial involvement in operations is not required. In determining whether a person actively participates, the participation of his spouse is considered. In determining what an activity is, it may be necessary to consider the degree of business and functional integration among different properties or units of property.[3] For a definition of "active participation," see Q 7928.

The rule allowing up to $25,000 of rental real estate losses and credit-equivalents to offset nonpassive income does not apply to losses and credits carried over from a year in which the taxpayer did not actively participate. Credits and losses that were disallowed in a prior year, because they exceeded the rental real estate exemption amount in that year, are only deductible under the $25,000 rule if the taxpayer actively participates in the year to which the losses and credits are carried over.[4]

7930. What is material participation in rental real estate?

A rental real estate activity of a taxpayer is not automatically considered a rental activity (see Q 7919) subject to the passive loss rules for a year, but only if during the year (1) more than one-half of the personal services performed by the taxpayer in trades or businesses during the year is in real property trades or businesses (see below) in which the taxpayer materially participates (see Q 7919), and (2) the taxpayer performs more than 750 hours of service during the year in such real property trades or businesses (making the taxpayer a qualifying taxpayer). For purposes of (2), personal services performed as an employee are not treated as performed in a real property trade or business unless the employee is a 5 percent owner. In the case of a closely held C corporation, the requirements are considered met if more than 50 percent

1. Sen. Rep. 99-313, 1986-3 CB (vol. 3) 713, 722, 736-37.
2. IRC Sec. 469(i)(6).
3. Sen. Rep. 99-313, 1986-3 CB (vol. 3) 713, 737-38.
4. IRC Sec. 469(i)(1).

of the gross receipts of the corporation are derived from real property trades or businesses in which the corporation materially participates. With respect to a joint return, these requirements are met only if either spouse separately satisfies the requirements.[1] Work performed by the taxpayer's spouse in a trade or business is treated as work performed by the taxpayer regardless of whether the spouses file a joint return.[2] Personal services do not include work performed in the individual's capacity as an investor.[3]

Any interest in rental real estate, including real property held for the production of income under IRC Section 212, is considered a trade or business for purposes of the rental real estate with material participation exception.[4] However, any rental real estate that the taxpayer grouped with a trade or business activity because the rental real estate was insubstantial in relation to the trade or business activity, or because the ownership interests in each activity were held in the same proportion (see Q 7924), is not an interest in rental real estate for purposes of the rental real estate with material participation exception.[5] A real property trade or business is any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business.[6] A facts and circumstances approach is used in determining the taxpayer's real property trade or business and, once determined, may not be changed unless the original determination was clearly inappropriate or a material change in circumstances has occurred that makes the earlier determination clearly inappropriate.[7] Each interest of a qualifying taxpayer in rental real estate will be treated as a separate rental real estate activity, unless an election is made to treat all rental real estate as a single activity (see below). A qualifying taxpayer may not group a rental real estate activity with any other activity.[8]

A qualifying taxpayer may elect to treat all interests in rental real estate as a single rental real estate activity and that election is binding for the taxable year in which it is made and for all future years in which the taxpayer is a qualifying taxpayer unless the taxpayer revokes the election because of a material change in circumstances. The fact that an election may prove less advantageous in one year is not in itself a material change in circumstances. Nor is a break in the taxpayer's status as a qualifying taxpayer necessarily a material change in circumstances.[9] If a taxpayer makes this election and at least one rental real estate interest is held by the taxpayer as a limited partnership interest, the combined rental real estate activity will be treated as a limited partnership interest for the purpose of determining material participation (see Q 7919) unless the taxpayer's share of gross rental income from all his limited partnership interests in rental real estate is less than 10 percent of his or her share of gross rental income from all interests in rental real estate for the year.[10]

1. IRC Sec. 469(c)(7).
2. Treas. Reg. §1.469-9(c)(4).
3. Treas. Reg. §1.469-9(b)(4).
4. Treas. Reg. §1.469-9(b)(1).
5. Treas. Reg. §1.469-9(b)(3).
6. IRC Sec. 469(c)(7)(C).
7. Treas. Reg. §1.469-9(d).
8. Treas. Reg. §1.469-9(e)(3).
9. Treas. Reg. §1.469-9(g).
10. Treas. Reg. §1.469-9(f).

Planning Point: The election may be made in any year in which the taxpayer is a qualifying taxpayer, and the failure to make the election in one year does not preclude the taxpayer from making the election in a subsequent year. [1]

The fact that an election is less advantageous to the taxpayer in a particular taxable year is not, of itself, a material change in the taxpayer's facts and circumstances. Similarly, a break in the taxpayer's status as a qualifying taxpayer is not, of itself, a material change in the taxpayer's facts and circumstances. [2]

In the absence of an election by a qualifying taxpayer, interests in rental real estate held by a partnership or S corporation pass-through entity are treated as one or more activities as grouped by the pass-through entity. See Q 7924. However, if the election is not made and the qualifying taxpayer holds at least a 50 percent interest in the capital, profits, or losses, of a pass-through entity, each interest in rental real estate held by the pass-through entity is treated as a separate activity of the qualifying taxpayer, regardless of the way the pass-through entity groups activities. If one pass-through entity owns at least a 50 percent interest in the capital, profits, or losses of another pass-through entity, each interest in rental real estate held by the lower-tier entity will be a separate interest in rental real estate of the upper-tier entity regardless of the way the lower-tier entity groups activities.[3]

The $25,000 rental real estate exemption of IRC Section 469(i) (discussed above) also applies to the passive losses and credits from rental real estate activities (including prior-year disallowed passive activity losses and credits from rental real estate activities in which the taxpayer materially participates) of a qualifying taxpayer. The $25,000 rental real estate exemption is determined after application of the rental real estate with material participation rules. However, losses allowable under the rental real estate with material participation rules are not taken into account in determining adjusted gross income for purposes of phase-out of the $25,000 rental real estate exemption.[4]

Example: Al owns building X and building Y, both interests in rental real estate. In 2014, Al is a qualifying taxpayer under the rental real estate with material participation rules. Al does not elect to treat X and Y as one activity under the rental real estate with material participation rules. As a result, X and Y are treated as separate activities. Al materially participates in X, which has $100,000 of passive losses disallowed from prior years and produces $20,000 of losses in 2014. Al does not materially participate in Y, which produces $40,000 of income in 2014. Al also has $50,000 of income from other non-passive sources in 2014. Al otherwise meets the requirements of the $25,000 rental real estate exemption.

Because X is not a passive activity in 2014, the $20,000 of losses produced by X in 2014 are non-passive losses that may be used by Al to offset part of the $50,000 of non-passive income. Accordingly, Al is left with $30,000 ($50,000 - $20,000) of non-passive income. In addition, Al may use the prior year disallowed passive losses of X to offset any income from X and passive income from other sources. Therefore, Al may offset the $40,000 of passive income from Y with $40,000 of passive losses from X.

1. Treas. Reg. 1.469-9(g)(1)
2. Treas. Reg. §1.469-9(g)(2).
3. Treas. Reg. §1.469-9(h).
4. Treas. Reg. §1.469-9(j).

Because Al has $60,000 ($100,000 - $40,000) of passive losses remaining from X and meets all of the requirements of the $25,000 rental real estate exemption, Al may offset up to $25,000 of non-passive income with passive losses from X under the exemption. As a result, Al has $5,000 ($30,000 – $25,000) of non-passive income remaining and disallowed passive losses from X of $35,000 ($60,000 – $25,000) in 2014.[1]

A taxpayer may have regrouped his activities without regard to the manner in which they were grouped in the preceding taxable years for the first taxable year beginning after December 31, 1993, to the extent necessary or appropriate to take advantage of the rental real estate with material participation exception.[2] See also Q 7924.

7931. What is the "hobby loss" rule? How does it limit deductions?

The "hobby loss" rule limits a taxpayer's deductions if the Service determines that the taxpayer did not enter into the activity with a profit motive or that the taxpayer continued in a money-losing venture after the possibility of profit had lost its importance. Once it is determined that the activity was not profit-motivated, the amount by which deductions exceed income attributable to the activity (e.g., the amount of loss attributable to the activity) is not deductible.[3] If an activity is not for profit, losses from that activity may not be used to offset other income. The limit on not-for-profit losses applies to individuals, partnerships, estates, trusts, and S corporations. It does not apply to corporations other than S corporations.[4]

Planning Point: The deductibility of hobby activity expenses may turn out to be limited in a particular case, however, because the deduction will be a miscellaneous itemized deduction. Miscellaneous itemized deductions are taken into account only to the extent that, in the aggregate, they exceed 2 percent of the taxpayer's adjusted gross income.[5] These deduction limitations apply to an activity continued without a profit motive from the time when the nature of the activity changed.

Whether an activity is engaged in for profit is determined based upon all relevant facts and circumstances.[6] Some factors that will be considered in determining whether or not the activity is profit-motivated include: (1) whether the activity is conducted in a businesslike manner; (2) the qualifications of the taxpayer or the taxpayer's advisors; (3) the amount of time and effort spent by the taxpayer or whether the taxpayer's agents and employees are competent to carry on the activity (the taxpayer need not personally manage the operation); (4) the potential for appreciation of the venture's assets; (5) the taxpayer's history with similar or dissimilar programs; (6) the taxpayer's success or failure with the particular activity; (7) the amount of occasional profits in relation to losses and to the amount of the taxpayer's investment; (8) the taxpayer's financial status, whether he or she can benefit from losses, and whether the taxpayer's main source of income is from some other activity; (9) elements of personal pleasure or recreation he or she derives from the activity.

A "reasonable" expectation of profit is not required, as when the probability of loss is much greater than the probability of gain.[7] However, the taxpayer must engage in the activity with

1. Treas. Reg. §1.469-9(j)(2).
2. Treas. Reg. §1.469-11(b)(3)(iii).
3. IRC Sec. 183.
4. IRS Fact Sheet 2008-23 (June, 2008)
5. IRC Sec. 67.
6. Treas. Reg. §1.183-2(b).
7. *Dreicer v. Comm.*, 78 TC 642 (1982), aff'd. without op. 702 F.2d 1205 (1983).

a genuine profit motive.[1] All facts and circumstances are taken into consideration, but greater weight is given to objective facts than to the parties' mere statements of their intent.[2]

Deductions permitted by the hobby loss rule are determined and allowed according to the following sequence: (1) amounts allowable under other IRC provisions without regard to whether the activity is profit-motivated (but other IRC provisions limiting the amount of these deductions would apply, such as limitations imposed on deductions for interest payments under IRC Section 163(d)); (2) to the extent that the gross income attributable to the activity exceeds deductions allowable under (1) above, amounts that would be allowed if the activity were engaged in for profit and that do not result in basis adjustments; (3) to the extent that the gross income attributable to the activity exceeds deductions allowable under (1) and (2) above, amounts that would be allowed if the activity were engaged in for profit and that result in basis adjustments, such as depreciation, partially worthless bad debts, and the disallowed portion of a casualty loss.[3]

Although IRC Section 183 addresses only the activities of individuals and S corporations, both the Service and Tax Court have taken the position that it also applies to partnerships.[4] The rule is applied at the partnership level and is reflected in the partner's distributive shares.[5]

If the gross income from the activity (determined without regard to profit motive) exceeds deductions for three or more taxable years in a period of five consecutive taxable years, the activity is presumed to be conducted for profit. (The net operating loss deduction is not taken into account as a deduction for this purpose.)[6] However, the Service is not prevented from attempting to rebut the presumption.[7]

The taxpayer may elect to postpone a determination of whether the presumption applies. The election postpones a profit determination until after the close of the fifth taxable year of the activity, so the Service will not try to limit deductions until the end of that year. Generally, the election must be made within three years after the due date (without regard to extensions) of the return for the first year of the activity.[8] However, making the election extends the statutory period for assessment of deficiency until two years after the due date (without extensions) for filing the return for the fifth year.[9]

If an electing taxpayer dies, the five year presumption period ends, even if profits are realized by the taxpayer's estate in winding up the activity. As the estate is a separate entity from the taxpayer, the estate's profits are not to be taken into consideration with regard to the for profit presumption in connection with the taxpayer's activity in years prior to his or her death.[10] The two year extension period for the statutory assessment of any deficiency begins to run from the time for filing a return for the year of death if death occurs during the five year period.[11]

1. *Fox v. Comm.*, 80 TC 972 (1983).
2. *Engdahl v. Comm.*, 72 TC 659 (1979).
3. IRC Sec. 183(b); Treas. Reg. §1.183-1(b).
4. Rev. Rul. 77-320, 1977-2 CB 78; *Silberman v. Comm.*, TC Memo 1983-782.
5. Rev. Rul. 77-320, above.
6. IRC Sec. 183(d).
7. *Dunn v. Comm.*, 70 TC 715 (1978), nonacq. at 1979 AOD LEXIS 25 (IRS 1979).
8. Temp. Treas. Reg. §12.9.
9. IRC Sec. 183(e).
10. Rev. Rul. 79-204, 1979-2 CB 111.
11. TAM 8718001.