

Federal Tax Regulations (TRC Version), Regulation, §1.469-1T., Internal Revenue Service, General rules (temporary)

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(a) Passive activity loss and credit disallowed

(1) In general.— Except as otherwise provided in paragraph (a)(2) of this section—

- (i) The passive activity loss for the taxable year shall not be allowed as a deduction; and
- (ii) The passive activity credit for the taxable year shall not be allowed.

(2) Exceptions.— Paragraph (a)(1) of this section shall not apply to the passive activity loss or the passive activity credit for the taxable year to the extent provided in—

- (i) Section 469(i) and the rules to be contained in §1.469-9T (relating to losses and credits attributable to certain rental real estate activities); and
- (ii) Section 1.469-11T (relating to losses and credits attributable to certain pre-enactment interests in activities).

(b) Taxpayers to whom these rules apply.— The rules of section 469 and the regulations thereunder generally apply to—

- (1) Individuals;
- (2) Trusts (other than trusts (or portions of trusts) described in section 671);
- (3) Estates;
- (4) Personal service corporations (within the meaning of paragraph (g)(2)(i) of this section); and
- (5) Closely held corporations (within the meaning of paragraph this section).

(c) Cross references

(1) Definition of “passive activity”.— Rules relating to the definition of the term “passive activity” are contained in paragraph (e) of this section.

(2) Passive activity loss.— Rules relating to the computation of the passive activity loss for the taxable year are contained in [§1.469-2T](#).

(3) Passive activity credit.— Rules relating to the computation of the passive activity credit for the taxable year are contained in [§1.469-3T](#).

(4) Effect of rules for other purposes.— Rules relating to the effect of section 469 and the regulations thereunder for other purposes under the Code are contained in paragraph (d) of this section.

(5) Special rule for oil and gas working interests.— Rules relating to the treatment of losses and credits from certain interests in oil and gas wells are contained in paragraph (e)(4) of this section.

(6) Treatment of disallowed losses and credits.— Paragraph (f) of this section contains rules relating to—

- (i) The treatment of deductions from passive activities in taxable years in which the passive activity loss is disallowed in whole or in part under paragraph (a)(1)(i) of this section; and

(ii) The treatment of credits from passive activities in taxable years in which the passive activity credit is disallowed in whole or in part under paragraph (a)(1)(ii) of this section.

(7) Corporations subject to section 469.— Rules relating to the application of section 469 and regulations thereunder to C corporations are contained in paragraph (g) of this section.

(8) [Reserved.]

(9) Joint returns.— Rules relating to the application of section 469 and the regulations thereunder to spouses filing a joint return for the taxable year are contained in paragraph (j) of this section.

(10) Material participation.— Rules defining the term "material participation" are contained in [§1.469-5T](#).

(11) Effective date and transition rules.— Rules relating to the effective date of section 469 and the regulations thereunder and transition rules applicable to pre-enactment interests in activities are contained in [§1.469-11T](#).

(12) Future regulations

(i) Rules relating to former passive activities and changes in corporate status will be contained in paragraph (k) of this section.

(ii) Rules relating to the definition of "activity" will be contained in [§1.469-4T](#).

(iii) Rules relating to the treatment of deductions from activities that are disposed of in certain transactions will be contained in [§1.469-6T](#).

(iv) Rules relating to the treatment of self-charged items of income and expense will be contained in [§1.469-7T](#).

(v) Rules relating to the application of section 469 and the regulations thereunder to trusts, estates, and their beneficiaries will be contained in [§1.469-8T](#).

(vi) Rules relating to the treatment of income, deductions, and credits from certain rental real estate activities of individuals and certain estates will be contained in [§1.469-9T](#).

(vii) Rules relating to the application of section 469 to publicly traded partnerships will be contained in [§1.469-10T](#).

(d) Effect of section 469 and the regulations thereunder for other purposes

(1) Treatment of items of passive activity income and gain.— Neither the provisions of section 469(a)(1) and paragraph (a)(1) of this section nor the characterization of items of income or deduction as passive activity gross income (within the meaning of [§1.469-2T\(c\)](#)) or passive activity deductions (within the meaning of [§1.469-2T\(d\)](#)) affects the treatment of any item of income or gain under any provision of the Internal Revenue Code other than section 469. The following example illustrates the application of this paragraph (d)(1):

Example. (i) In 1991, an individual's only income and loss from passive activities are a \$10,000 capital gain from passive activity X and a \$12,000 ordinary loss from passive activity Y. The taxpayer also has a \$10,000 capital loss that is not derived from a passive activity.

(ii) Under [§1.469-2T\(b\)](#), the taxpayer has a \$2,000 passive activity loss for the taxable year. The only effect of section 469 and the regulations thereunder is to disallow a deduction for the taxpayer's \$2,000 passive activity loss for the taxable year. Thus, the taxpayer's capital loss for the taxable year is allowed because the \$10,000 capital gain from passive activity X is taken into account under section 1211(b) in computing the taxpayer's allowable capital loss for the year.

(2) Coordination with sections 613A(d) and 1211.— [Reserved] See §1.469-1(d)(2) for rules relating to this paragraph.

(3) Treatment of passive activity losses.— Except as otherwise provided by regulations, a deduction that is disallowed for a taxable year under section 469 and regulations thereunder is not taken into account as a deduction that is allowed for the taxable year in computing the amount subject to any tax imposed by subtitle A of the Internal Revenue Code. The following example illustrates the application of this paragraph (d)(3):

Example. An individual has a \$5,000 passive activity loss for a taxable year, all of which is disallowed under paragraph (a)(1) of this section. All of the disallowed loss is allocated under paragraph (f) of this section to activities that are trades or businesses (within the meaning of section 1402(c)). Such loss is not taken into account for the taxable year in computing the taxpayer's taxable income subject to tax under section 1. In addition, under this paragraph (d)(3), such loss is not taken into account for the taxable year in computing the taxpayer's net earnings from self-employment subject to tax under section 1401.

(e) Definition of "passive activity"

(1) In general.— Except as otherwise provided in this paragraph (e), an activity is a passive activity of the taxpayer for a taxable year if and only if the activity—

- (i) Is a trade or business activity (within the meaning of paragraph (e)(2) of this section) in which the taxpayer does not materially participate for such taxable year; or
- (ii) Is a rental activity (within the meaning of paragraph (e)(3) of this section), without regard to whether or to what extent the taxpayer participates in such activity.

(2) Trade or business activity.— [Reserved] See §1.469-1(e)(2) for rules relating to this paragraph.

(3) Rental activity

(i) In general.— Except as otherwise provided in this paragraph (e)(3), an activity is a rental activity for a taxable year if—

- (A) During such taxable year, tangible property held in connection with the activity is used by customers or held for use by customers; and
- (B) The gross income attributable to the conduct of the activity during such taxable year represents (or, in the case of an activity in which property is held for use by customers, the expected gross income from the conduct of the activity will represent) amounts paid or to be paid principally for the use of such tangible property (without regard to whether the use of the property by customers is pursuant to a lease or pursuant to a service contract or other arrangement that is not denominated a lease).

(ii) Exceptions.— For purposes of this paragraph (e)(3), an activity involving the use of tangible property is not a rental activity for a taxable year if for such taxable year—

- (A) The average period of customer use for such property is seven days or less;
- (B) The average period of customer use for such property is 30 days or less, and significant personal services (within the meaning of paragraph (e)(3)(iv) of this section) are provided by or on behalf of the owner of the property in connection with making the property available for use by customers;
- (C) Extraordinary personal services (within the meaning of paragraph (e)(3)(v) of this section) are provided by or on behalf of the owner of the property in connection with making such property available for use by customers (without regard to the average period of customer use);

- (D)** The rental of such property is treated as incidental to a nonrental activity of the taxpayer under paragraph (e)(3)(vi) of this section;
- (E)** The taxpayer customarily makes the property available during defined business hours for nonexclusive use by various customers; or
- (F)** The provision of the property for use in an activity conducted by a partnership, S corporation, or joint venture in which the taxpayer owns an interest is not a rental activity under paragraph (e)(3)(vii) of this section.

(iii) Average period of customer use.— [Reserved] See §1.469-1(e)(3)(iii) for rules relating to this paragraph.

(iv) Significant personal services

(A) In general.— For purposes of paragraph (e)(3)(ii)(B) of this section, personal services include only services performed by individuals, and do not include excluded services (within the meaning of paragraph (e)(3)(iv)(B) of this section). 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 shall be 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.

(B) Excluded services.— For purposes of paragraph (e)(3)(iv)(A) this section, the term "excluded services" means, with respect to any property made available for use by customers—

- (1)** Services necessary to permit the lawful use of the property;
- (2)** Services performed in connection with the construction of improvements to the property, or in connection with the performance of repairs that extend the property's useful life for a period substantially longer than the average period for which such property is used by customers; and
- (3)** Services, provided in connection with the use of any improved real property, that are similar to those commonly provided in connection with long-term rentals of high-grade commercial or residential real property (e.g., cleaning and maintenance of common areas, routine repairs, trash collection, elevator service, and security at entrances or perimeters).

(v) Extraordinary personal services.— For purposes of paragraph (e)(3)(ii)(C) of this section, extraordinary personal services are provided in connection with making property available for use by customers only if the services provided in connection with the use of the property are performed by individuals, and the use by customers of the property is incidental to their receipt of such services. For example, the use by patients of a hospital's boarding facilities generally is incidental to their receipt of the personal services provided by the hospital's medical and nursing staff. Similarly, the use by students of a boarding school's dormitories generally is incidental to their receipt of the personal services provided by the school's teaching staff.

(vi) Rental of property incidental to a nonrental activity of the taxpayer

(A) In general.— For purposes of paragraph (e)(3)(ii)(D) of this section, the rental of property shall be treated as incidental to a nonrental activity of the taxpayer only to the extent provided in this paragraph (e)(3)(vi).

(B) Property held for investment.— The rental of property during a taxable year shall be treated as incidental to an activity of holding such property for investment if and only if—