



**RENTAL OF RESIDENCES
IN THE MODERN WORLD**

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Reporting income from rental of a dwelling unit is not a one-tax-rule-fits-all

- IRC 183 Activities Not Engage in for Profit
- IRC 280A Rental of Vacation Homes
 - PMTA 2019-01 Interplay between the \$10,000 limitation of §164(b)(6) and §280A(b)
- IRC 469 (General) Passive Activity Rules
- IRC 469(c)(7) Real Estate Professional Exception
- IRC 199A Qualified Business Income Deduction
 - NOTICE 2019-07 Real Estate Trade or Business Safe Harbor
- IRC 162 Trade or Business Expenses...
 - Characteristics of Carrying on a Trade or Business

IRC 183
Activities Not Engaged in for Profit

- How often does this situation occur?
- How about rental to family members at less than fair market value?
- If you don't rent your property to make a profit, you can't deduct rental expenses in excess of the amount of your rental income.
 - No losses allowed
 - No carryforwards

IRC 280(A) – Disallowance of certain expenses in connection with business use of home, rental of vacation homes, etc.

- ...no deduction otherwise allowable under this chapter shall be allowed with respect to the use of a dwelling unit which is used by the taxpayer during the taxable year as a residence...
- There are three categories of usage that frame the general vacation home rental rules...

IRC 280(A) – Disallowance of certain expenses in connection with business use of home, rental of vacation homes, etc.

- What if the rental is less than 15 days a year?
- What if the owner restricts their usage to under 15 days a year?
- How do you figure rental expenses when the rental is only a portion of the personal residence or vacation home?
- What is personal use v. business use?

IRS advises that you limit your SALT...

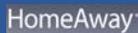
- How do the SALT limitations rules affect the computation of vacation home rental and home office deductions?

- PMTA 2019-01 Interplay between the \$10,000 limitation of §164(b)(6) and §280A(b)



VARIATIONS ON VACATION RENTALS THANKS TO THE SHARING ECONOMY

Rules for Home Rentals



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How it works

A community built on sharing

Airbnb began in 2008 when two designers who had space to share hosted three travelers looking for a place to stay. Now, millions of hosts and travelers choose to create a free Airbnb account so they can list their space and book unique accommodations anywhere in the world.



Trusted services

Airbnb helps make sharing easy, enjoyable, and safe. We verify personal profiles and listings, maintain a smart messaging system so hosts and guests can communicate with certainty, and manage a trusted platform to collect and transfer payments.



www.airbnb.com

Possible concerns of state and local governments:

- Business use in residentially zoned areas
- Unfair competition for hotels/motels
- Safety issues and increased need of local services
- Activities of visitors not same as owners/residents – noise, keeping the location neat and safe, etc.
- Reducing supply of long-term housing and increasing its cost
- Rent control issues – might tenant charge more than owner can charge?
- Failure of owners to pay taxes – TOT, business license, personal property taxes
- Need for simpler tax rules (at all levels)
- Illegal rentals / enforcement capabilities

Landlord considerations

- Is the rental legal in that city or county?
 - If yes, any restrictions to follow? Is registration required?
- Does any homeowner association contract allow the rental?
 - Is registration required with the HOA?
- Must owner or tenant have a business license (and pay a local tax)?
- Is transient occupancy tax (TOT) owed? How? Does the platform company handle that?
- Are personal property taxes owed?
 - Example – see San Francisco information
 - <https://sfassessor.org/forms-notices/notices/short-term-rental-faq>

Can a vacation home rental activity actually be a business?

- What if your client purchases a residential unit to rent only to offer short-term rentals?
- When would a client get a 1099-K?
- What if there isn't any third-party reporting of the rental?
- What state or local tax considerations should we be warning clients about who participate in the very short-term rental market?

When would a vacation home rental be presented on a Schedule C rather than a Schedule E?

- What constitutes "substantial services?"
- When would a rental property owner be subject to SE tax?

Rental real estate enterprise safe harbor

- Solely for the purposes of 199A, a safe harbor is available to individuals and owners of passthrough entities. Under the safe harbor a rental real estate enterprise will be treated as a trade or business for purposes of the QBI deduction. *For more information on the safe harbor see Notice 2019-07.*
- *"Failure to satisfy the requirements of this safe harbor does not preclude a taxpayer from otherwise establishing that a rental real estate enterprise is a trade or business for purposes of section 199A."*

My client only owns one or two rentals. Do 199A rules apply to her?

- Can a single rental activity constitute a "real estate enterprise" and be considered a trade or business?
- IRC 162 allows deductions for ordinary and necessary trade or business expenses
- ...rules regarding the practical application of IRC 162 have evolved largely from case law and administrative guidance

My client owns multiple rentals, but they are mostly generating losses...

- Do I even have to think about the 199A issues if the properties are generating losses currently?
- What if they are producing income that is absorbed by prior year suspended losses?
- What can I do in presenting my clients information that will help support the presumption the properties are being conducted as a trade or business?
- Would filing 1099-MISC help?

How do the rental rules work differently if the owner is a "real estate professional?"

- ...and California does not conform to this provision
- Nor does it conform to ANY of the TCJA provisions...yet

How do the 199A rules interact with the Net Investment Income rules of IRC 1411?

- Can I avoid the IRC 1411 rules by using the 199A rules because I believe my property qualifies as a IRC 162 business activity/real estate enterprise?
- NII distinguishes passive v. non-passive income

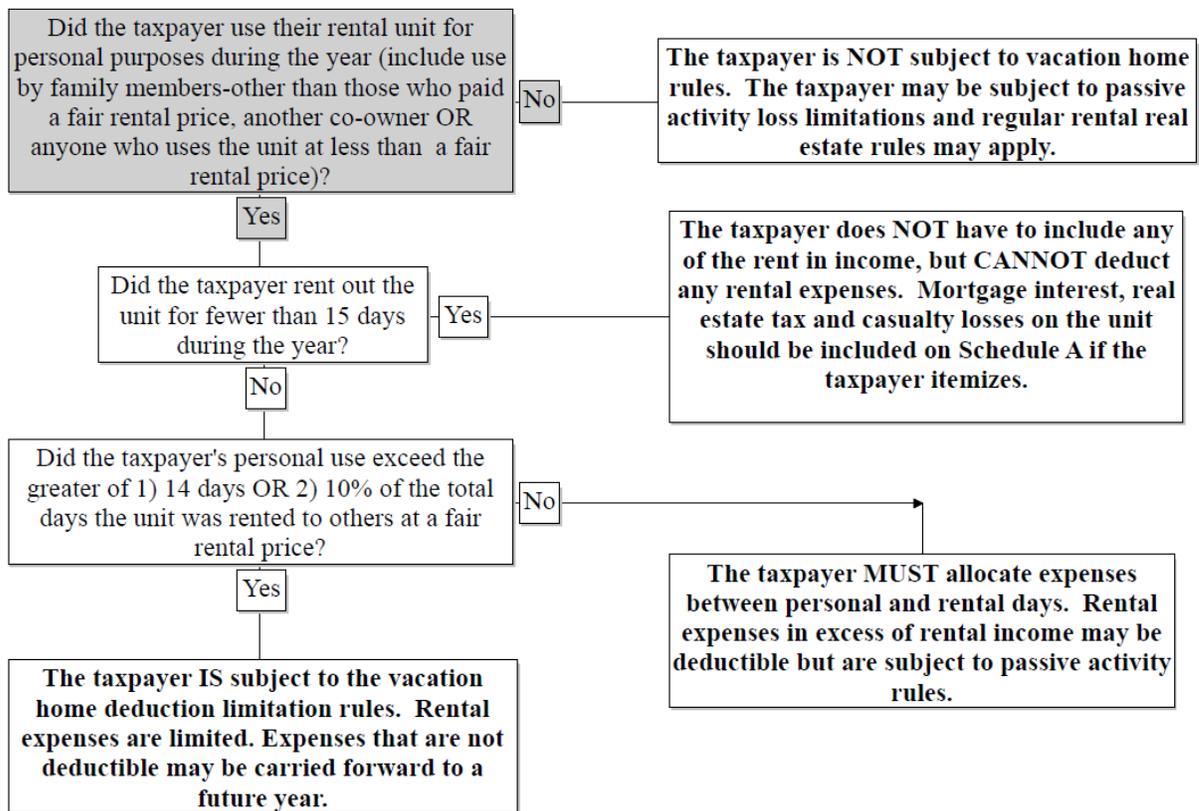
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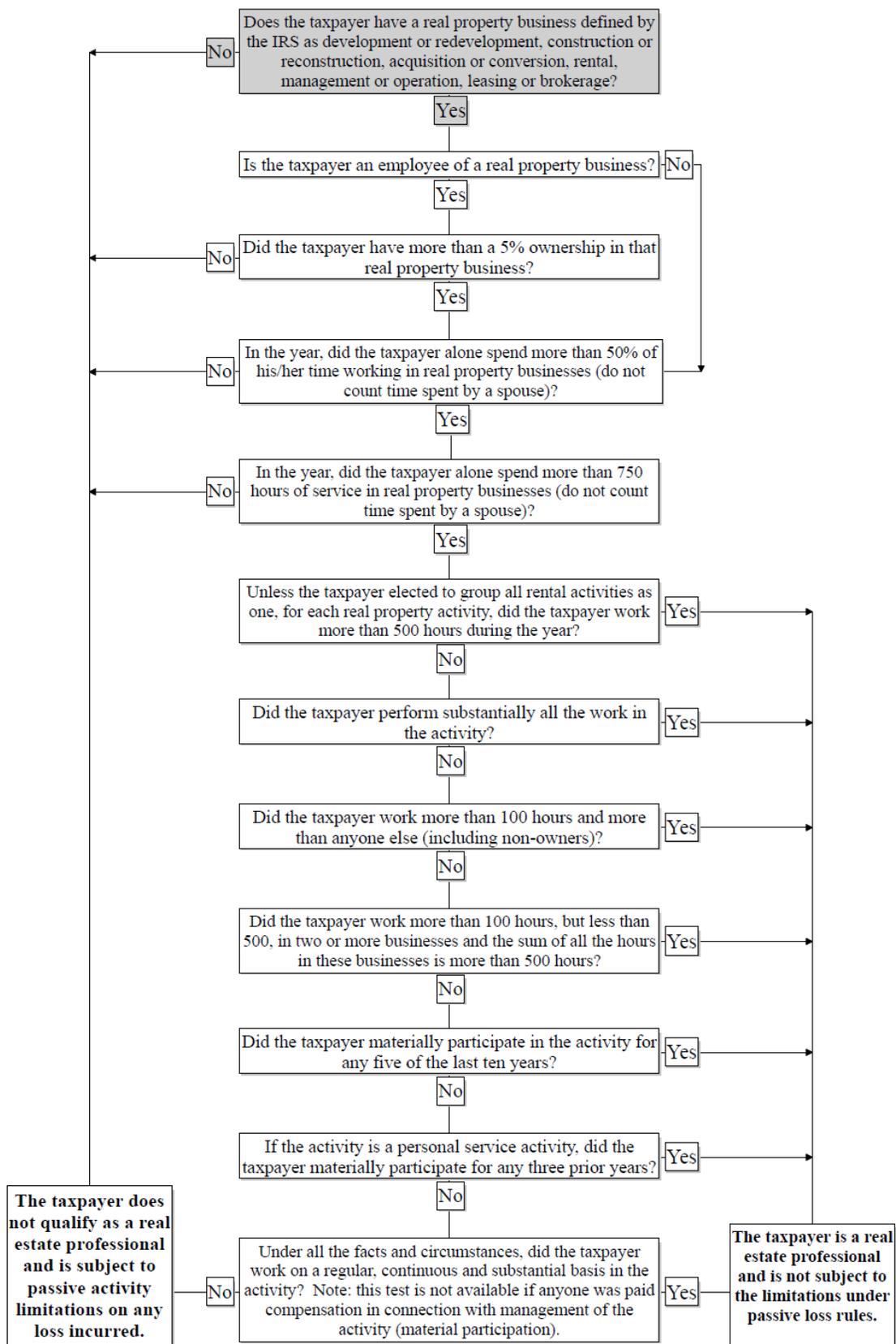


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Vacation Home Rules: is the taxpayer subject to these rules?



Real Estate Professional: does the taxpayer qualify?



Vacation Home Rental Worksheet - IRS Method

Name(s):
Description of property:

ID#:
Tax Year:

Dwelling Unit Used as Home (Use this module only if the answer is YES to all of the following questions.)

- Was the dwelling unit used as a home this year?
- Was the dwelling unit rented 15 days or more this year?
- Are the total rental expenses & depreciation more than the income?

Dividing Expenses Between Rental and Personal Use

- A) Number of days of rental use
- B) Number of days of personal use
- C) Number of days in tax year

Allocation Factors for Expenses

- D) IRS Method (line A/(line A + line B) %
- E) Tax Court Method for interest and taxes ONLY (line A/line C) %

IRS Method

Gross Rents Received	Operating Expenses
Home Mortgage Interest	Excess Mortgage Interest
Mortgage Insurance Premiums	Excess Mortgage Insurance Premiums
Real Estate Taxes	Excess Casualty/Theft Losses
Casualty/Theft Losses	Depreciation as if 100% Rental
Direct Rental Expenses	

- | | | |
|---|--|---|
| 1. Rents received | | |
| 2. a. Rental portion of deductible mortgage interest | | 0 |
| Rental portion of deductible mortgage insurance premiums | | 0 |
| b. Rental portion of real estate taxes | | 0 |
| c. Rental portion of deductible casualty and theft losses | | 0 |
| d. Direct rental expenses | | |
| e. Fully deductible RENTAL EXPENSES . Add lines 2a - 2d | | 0 |
| 3. Subtract line 2e from line 1. If zero or less, then zero | | 0 |
| 4. a. Rental portion of expenses related to operating
or maintaining the dwelling unit (such as repairs
insurance, and utilities) | | 0 |
| b. Rental portion of excess mortgage interest | | 0 |
| Rental portion of excess mortgage insurance premiums | | 0 |
| c. Carryover of Operating Expenses (prior year) | | |
| d. Add lines 4a - 4c | | 0 |
| e. Allowable OPERATING EXPENSES . Smaller of line 3 or 4d | | 0 |
| 5. Subtract line 4e from line 3. If zero or less, then zero | | 0 |
| 6. a. Rental portion of excess casualty and theft losses | | 0 |
| b. Rental portion of depreciation of the dwelling unit | | 0 |
| c. Carryover of excess casualty and theft losses and depreciation (prior year) | | |
| d. Add lines 6a - 6c | | 0 |
| e. Allowable EXCESS CASUALTY and THEFT LOSSES and DEPRECIATION
Smaller of line 5 or line 6d | | 0 |
| <hr/> | | |
| 7. a. Operating expenses to be carried over to next year
Subtract line 4e from line 4d | | 0 |
| b. Excess casualty and theft losses and depreciation to be
carried over to next year. Subtract line 6e from line 6d | | 0 |