



51A Middle Street Newburyport MA 01950
Phone: 800-588-7039 Fax: 877-902-4284
contact@bhfe.com www.bhfe.com

Course Information

Course Title: *Passive Loss and At-Risk Rules #492920*

Recommended CPE credit hours for this course

In accordance with the standards of the National Registry of CPE Sponsors and the IRS, CPE credits have been granted based on a 50-minute hour.

CPA 2.5 (All states)

National Registry of CPE Sponsors ID Number: 107615.

Sponsor numbers for states requiring sponsor registration:

Florida Division of Certified Public Accountancy: 4761 (Ethics #11467)

Hawaii Board of Public Accountancy: 14003

New York State Board of Accountancy (ethics): 002146

Ohio State Board of Accountancy: M0021

Pennsylvania Board of Accountancy: PX178025

Texas State Board of Accountancy: 009349

EA/OTRP 2 (All States) IRS: Qualified Sponsor number: *FWKKO*.

CLU, ChFC Professional Recertification 2

Course Description

With the adoption of the passive loss limitation rules, taxpayers are looking to CPAs for guidance related to what deductions are allowed, disallowed, or suspended. Updating practitioners on the practical aspects of §469, this course addresses the needed skill to handle these pragmatic issues. Fundamentals are reviewed, planning opportunities are identified, and creative strategies are discussed and evaluated along with remaining traditional approaches. The goal of this instructive course is to understand and solve client problems under §469, with emphasis on tax savings ideas. Participants will learn to master the proper administration of these complex and often cumbersome provisions.

Program Delivery Method: Self-Study (NASBA QAS Self-Study/interactive)

Subject Codes/Field of Study

NASBA (CPA): Taxes.

IRS (EA, OTRP): Federal Tax Law.

Course Level, Prerequisites, and Advance Preparation Requirements

Program Level: Overview.

This program is appropriate for professionals at all organizational levels.

Prerequisites: Basic familiarity with federal taxation

Advance Preparation: None

Course Content

Publication/Revision Date: 2/18/2020.

Author: Danny Santucci, J.D.

Final exam (online): Fifteen questions (multiple-choice).

Instructions for taking this course

Note: Downloading the PDF of this course will enable Bookmarks for easier navigation (on the left side of the document window, open the bookmarks pane).

You must complete this course within one year of the date of purchase (if you do not complete the course within one year, contact us to determine whether an updated edition of the course is available, in which case we will provide you with a PDF of the updated course and the online exam at no charge).

A passing grade of at least 70% is required on the final exam for this course. You may retake the exam if you do not pass it on the first attempt (no charge).

Complete the course by following the learning objectives listed on the following page, studying the text, and studying the review questions at the end of each major section (or at the end of the course). Once you have completed studying the course and you are confident that the learning objectives have been met, answer the final exam questions (online).

Instructions for Taking the Final Exam Online

- Login to your account online at www.bhfe.com.
- Go to "My Account" and view your course.
- Select "Take Exam" for this course and follow instructions.

Additional Information

- The exam may be started, stopped, then resumed at a later date.
- The exam is "open book," it is not timed, and it may be retaken if not passed on the first attempt (no charge).
- Results (correct, incorrect answers) and certificate appear immediately upon passing the exam.
- CFP® and EA credits are reported weekly.

Have a question? Call us at 800-588-7039 or email us at contact@bhfe.com.

Learning Assignment & Objectives

As a result of studying the assigned materials, you should be able to meet the objectives listed below.

ASSIGNMENT

At the start of the materials, participants should identify the following topics for study:

- * Passive loss rules
- * Material participation
- * Activity definition
- * Passive & nonpassive activities
- * Passive activity loss
- * Rental activities
- * Recharacterization of passive income
- * Passive activity credits
- * Passive activity audit guide
- * At-risk limits

Learning Objectives

After reading the materials, participants will be able to:

1. Identify affected taxpayers, categories of income and loss and passive losses under §469 and necessary §469 calculation steps and specify the §469 & §1211 limits and the ordering and suspension of any disallowed losses.
2. Recognize a taxpayer's material participation in an activity by:
 - a. Identifying the material participation tests and their application to entities such as partnerships and corporations;
 - b. Specifying the activity grouping rules and exempt activities;
 - c. Determining passive activity particularly, the treatment of rental activity as passive; and
 - d. Identifying "nested" activities.
3. Identify special passive loss rules and calculations by:
 - a. Determining alternating use affects on amount realized and adjusted basis and citing additional loss limitations outside of §469;
 - b. Recognizing requirements for the special \$25,000 allowance; and
 - c. Specifying recharacterization rules and their purpose.
4. Recognize the passive activity audit guidelines identifying audit issues, determine the real estate rental activity credit exception, and cite the at-risk limit rules as they relate to §469.

After studying the materials, answer the exam questions 1 to 15.

Notice

This course and test have been adapted from materials and information contained in the above text and any supplemental material provided. This course is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional advice and assumes no liability whatsoever in connection with its use. Since laws are constantly changing, and are subject to differing interpretations, we urge you to do additional research and consult appropriate experts before relying on the information contained in this course to render professional advice.

PASSIVE



PORTFOLIO



**MATERIAL
PARTICIPATION**



Passive Loss & At-Risk Rules

By

Danny C. Santucci

The author is not engaged by this text, any accompanying electronic media, or lecture in the rendering of legal, tax, accounting, or similar professional services. While the legal, tax and accounting issues discussed in this material have been reviewed with sources believed to be reliable, concepts discussed can be affected by changes in the law or in the interpretation of such laws since this text was printed. For that reason, the accuracy and completeness of this information and the author's opinions based thereon cannot be guaranteed. In addition, state or local tax laws and procedural rules may have a material impact on the general discussion. As a result, the strategies suggested may not be suitable for every individual. Before taking any action, all references and citations should be checked and updated accordingly.

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service. If legal advice or other expert advice is required, the services of a competent professional person should be sought.

—From a Declaration of Principles jointly adopted by a committee of the American Bar Association and a Committee of Publishers and Associations.

Copyright January 2020

Danny Santucci

Table of Contents

Passive Loss Rules.....	1
Application	1
Active Losses	1
Credits	2
Calculating Passive Loss - The “Fish” Rules.....	2
Categories of Income & Loss.....	2
Passive	2
Portfolio.....	3
Material Participation	3
Suspension of Disallowed Losses	6
Fully Taxable Disposition.....	6
Abandonment & Worthlessness.....	6
Related Party Transactions	6
Credits	6
Disallowance	7
Increase Basis Election	7
Other Transfers	7
Transfer By Reason Of Death - §469(g)(2).....	7
Transfer By Gift - §469(j)(6).....	7
Installment Sale - §469(g)(3).....	8
Activity No Longer Treated As Passive Activity - §469(f)(1).....	8
Closely Held To Nonclosely Held Corporation - §469(f)(2)	8
Nontaxable Transfer.....	9
Ordering of Losses	9
Capital Loss Limitation - §1211	10
Carryforwards	11
Allocation of Suspended Losses.....	11
Taxpayers Affected	11
Noncorporate Taxpayers.....	11
Regular Corporations.....	11
Personal Service Corporations	11
Definition - Temp. Reg. §1.469-1T(g)(2)(i)	13
Personal Services	13
Principal Activity - 50% Test	13
Substantially Performed by Employee-Owners - 20% Test.....	13
Material Participation.....	14
“Trade or Business” Definition	14
February 19, 1988 Regulations	14
General Rule for Individuals.....	14
Record keeping	17

Meaning of Participation.....	17
Exceptions to Definition - The “Unwork” Rules	17
Husband & Wife Counted as One.....	18
Annual Test	18
Pre-’87 Participation - 500 Hours	19
Special Rules for Entities.....	21
Limited Partnership Interests Presumption	21
Exceptions to Presumption	21
Trusts and Estates.....	22
Retired & Disabled Farmers.....	22
Corporations.....	22
Activity Definition.....	24
Final Regulations	26
Relevant Factors.....	26
Rental Activities.....	26
Limited Partnership Activities.....	27
Partnership & S Corporation Activities	27
Consistency.....	27
Regrouping	28
Partial Dispositions	28
Passive & Nonpassive Activities	28
Trade or Business.....	29
Characterization Based on Participation	29
Rental Activity.....	29
Exceptions.....	29
Non-Passive Activities.....	30
Rental Activities of Real Estate Professionals	30
Eligibility Standards	30
Working Interests in Oil & Gas.....	32
Entities That Limit Liability.....	32
Activities within Activities	32
Passive Activity Loss.....	33
Husband & Wife	33
Special Rule for Closely Held Corporations.....	33
Net Active Income.....	33
Carryover of Disallowed Losses.....	36
Treatment of Carryover Losses	36
Allocation Process.....	36
Significant Participation Activities.....	37
Income from Dispositions of Property Used in Passive Activities	38
Mixed Use of Property	38
Alternating Use	38
De Minimis Use Rule - 10/10 Test.....	39
Disposition of Appreciated Property Formerly Used in a Nonpassive Activity.....	39
Rental Activities	39
Special Rule for Rental Real Estate.....	39
Five Conditions	40
Active Participation	42
Change in Participation	42
Application of \$25,000 Allowance Rule.....	42
Aggregation & Ordering:	42

Net Operating Loss	43
Net Leases	43
Definition.....	43
Recharacterization of Passive Income.....	43
Active Business Recharacterization	43
Significant Participation Income Rules.....	43
Ratable Portion of Income	44
Formula.....	44
Significant Participation Losses	44
Rental of Property Developed by Taxpayer	44
Self-Rented Property	45
Portfolio Income Recharacterization Rules.....	45
Rental of Nondepreciable Property	45
Equity Financed Lending Activities	45
Limitation on Recharacterization	45
Passive Activity Credits	46
Regular Tax Liability Allocable to Passive Activities.....	46
Formula.....	46
Exception for Real Estate Rental Activity Credits	46
Application	47
Credits Subject to Passive Activity Limits.....	47
Allocation of Disallowed Credits.....	48
Treatment of Carryover Credits	48
Passive Activity Audit Guide	48
Indicators of Audit Issues	48
Investment Interest	49
Material Participation	49
Significant Participation Activities.....	50
Active Participation.....	50
Net Lease Properties.....	50
Vacation Rentals	51
Self-Charged Expenses.....	51
Rental & Nonrental Activity Grouping	51
Divorce	52
At-Risk Limits.....	52
Amount At Risk	52
Taxpayers Affected	52
Closely Held Corporation	52
Qualified Corporation Exception.....	54
Qualifying Business Requirements	54
Loss Defined.....	55
Disallowed Losses.....	55
Form 6198.....	55
Partnership & S Corporation Limits	55
Activities Covered by the At-Risk Rules.....	56
Equipment Leasing.....	56
Real Property	57
Grouping of Activities.....	57
Partners & S Corporation Shareholders	58
At-Risk Amounts	58
Borrowed Amounts	58

Related Persons	59
Subsequent Years	60
Amounts Not At Risk	60
Nonrecourse Financing	61
Other Loss Limiting Arrangements	61
Reductions of Amounts At Risk.....	62

Learning Objectives

After reading the materials, participants will be able to:

1. Identify affected taxpayers, categories of income and loss and passive losses under §469 and necessary §469 calculation steps and specify the §469 & §1211 limits and the ordering and suspension of any disallowed losses.
2. Recognize a taxpayer's material participation in an activity by:
 - a. Identifying the material participation tests and their application to entities such as partnerships and corporations;
 - b. Specifying the activity grouping rules noting exempt activities;
 - c. Determining passive activity particularly, the treatment of rental activity as passive; and
 - d. Identifying "nested" activities.
3. Identify special passive loss rules and calculations by:
 - a. Determining alternating use affects on amount realized and adjusted basis and citing additional loss limitations outside of §469;
 - b. Recognizing requirements for the special \$25,000 allowance; and
 - c. Specifying recharacterization rules and their purpose.
4. Recognize the passive activity audit guidelines identifying audit issues, determine the real estate rental activity credit exception, and cite the at-risk limit rules as they relate to §469.