What are the exceptions to rental activities?

By Jason Watson (Google+)

There are six exceptions to the definition of rental under Income Tax Regs Section 1.469-1T(e)(3)(ii). These activities are deemed a business. As a result, the active participation standard and the $25,000 passive loss allowance do not apply. If the activity falls outside the rental definition, it is passive or non-passive based on whether the taxpayer materially participates. Here are the exceptions:

- The average period of customer use is 7 days or less. Examples are condo rentals, short-term use of hotel rooms, and businesses that rent videos, tuxedos, cars, tools, etc.
- The average period of customer use is 30 days or less and significant personal services are provided with the rental. Examples are hotels and motels.
- Extraordinary personal services are provided with the rental. Examples are hospitals, nursing homes and boarding schools.
- The rental is incidental to a non-rental activity.
- The taxpayer customarily makes the rental property available during defined business hours for nonexclusive use by various customers. Examples are golf courses, health clubs and spas.
- The taxpayer provides the property for use in a non-rental activity of his own partnership, S Corporation, or joint venture. The key word here is “provides,” not “rents.” For example: a partner contributes property in exchange for an ownership interest. This non-leasing transaction with the partnership is not a rental. Income Tax Regs Section 1.469-1T(e)(3)(vii) states: “Thus, if a partner contributes the use of property to a partnership, none of the partner’s distributive share of partnership income is income from a rental activity.”