

Internal Revenue Code Section 469(i)(3)

Passive activity losses and credits limited.

(i) \$ 25,000 offset for rental real estate activities.

(1) In general. In the case of any natural person, subsection (a) shall not apply to that portion of the passive activity loss or the deduction equivalent (within the meaning of subsection (j)(5)) of the passive activity credit for any taxable year which is attributable to all rental real estate activities with respect to which such individual actively participated in such taxable year (and if any portion of such loss or credit arose in another taxable year, in such other taxable year).

(2) Dollar limitation. The aggregate amount to which paragraph (1) applies for any taxable year shall not exceed \$ 25,000.



(3) Phase-out of exemption.

(A) In general. In the case of any taxpayer, the \$ 25,000 amount under paragraph (2) shall be reduced (but not below zero) by 50 percent of the amount by which the adjusted gross income of the taxpayer for the taxable year exceeds \$ 100,000.

(B) Special phase-out of rehabilitation credit. In the case of any portion of the passive activity credit for any taxable year which is attributable to the rehabilitation credit determined under section 47, subparagraph (A) shall be applied by substituting '\$ 200,000' for '\$ 100,000'.

(C) Exception for commercial revitalization deduction. Subparagraph (A) shall not apply to any portion of the passive activity loss for any taxable year which is attributable to the commercial revitalization deduction under section 1400I.

(D) Exception for low-income housing credit. Subparagraph (A) shall not apply to any portion of the passive activity credit for any taxable year which is attributable to any credit determined under section 42.

(E) Ordering rules to reflect exceptions and separate phase-outs. If subparagraph (B), (C), or (D) applies for a taxable year, paragraph (1) shall be applied—

(i) first to the portion of the passive activity loss to which subparagraph (C) does not apply,

(ii) second to the portion of such loss to which subparagraph (C) applies,

(iii) third to the portion of the passive activity credit to which subparagraph (B) or (D) does not apply,

(iv) fourth to the portion of such credit to which subparagraph (B) applies, and

(v) then to the portion of such credit to which subparagraph (D) applies.

(F) Adjusted gross income. For purposes of this paragraph, adjusted gross income shall be determined without regard to—

(i) any amount includible in gross income under section 86,

(ii) the amounts excludable from gross income under sections 135 and 137,

(iii) the amounts allowable as a deduction under sections 199, 219, 221, and 222, and

(iv) any passive activity loss or any loss allowable by reason of subsection (c)(7).

(4) Special rule for estates.

(A) In general. In the case of taxable years of an estate ending less than 2 years after the date of the death of the decedent, this subsection shall apply to all rental real estate activities with respect to which such decedent actively participated before his death.

(B) Reduction for surviving spouse's exemption. For purposes of subparagraph (A), the \$ 25,000 amount under paragraph (2) shall be reduced by the amount of the exemption under paragraph (1) (without regard to paragraph (3)) allowable to the surviving spouse of the decedent for the taxable year ending with or within the taxable year of the estate.

(5) Married individuals filing separately.

(A) In general. Except as provided in subparagraph (B), in the case of any married individual filing a separate return, this subsection shall be applied by substituting—

(i) '\$ 12,500' for '\$ 25,000' each place it appears,

(ii) '\$ 50,000' for '\$ 100,000' in paragraph (3)(A), and

(iii) '\$ 100,000' for '\$ 200,000' in paragraph (3)(B).

(B) Taxpayers not living apart. This subsection shall not apply to a taxpayer who—

(i) is a married individual filing a separate return for any taxable year, and

(ii) does not live apart from his spouse at all times during such taxable year.

(6) Active participation.

- (A) In general. An individual shall not be treated as actively participating with respect to any interest in any rental real estate activity for any period if, at any time during such period, such interest (including any interest of the spouse of the individual) is less than 10 percent (by value) of all interests in such activity.
- (B) No participation requirement for low-income housing, rehabilitation credit, or commercial revitalization deduction. Paragraphs (1) and (4)(A) shall be applied without regard to the active participation requirement in the case of—
- (i) any credit determined under section 42 for any taxable year,
 - (ii) any rehabilitation credit determined under section 47, or
 - (iii) any deduction under section 1400I (relating to commercial revitalization deduction).
- (C) Interest as a limited partner. Except as provided in regulations, no interest as a limited partner in a limited partnership shall be treated as an interest with respect to which the taxpayer actively participates.
- (D) Participation by spouse. In determining whether a taxpayer actively participates, the participation of the spouse of the taxpayer shall be taken into account.