

Internal Revenue Code Section 280A(d)(3)(D)

Disallowance of certain expenses in connection with business use of home, rental of vacation homes, etc.

(d) Use as residence.

(1) In general. For purposes of this section, a taxpayer uses a dwelling unit during the taxable year as a residence if he uses such unit (or portion thereof) for personal purposes for a number of days which exceeds the greater of—

(A) 14 days, or

(B) 10 percent of the number of days during such year for which such unit is rented at a fair rental. For purposes of subparagraph (B), a unit shall not be treated as rented at a fair rental for any day for which it is used for personal purposes.

(2) Personal use of unit. For purposes of this section, the taxpayer shall be deemed to have used a dwelling unit for personal purposes for a day if, for any part of such day, the unit is used—

(A) for personal purposes by the taxpayer or any other person who has an interest in such unit, or by any member of the family (as defined in section 267(c)(4)) of the taxpayer or such other person;

(B) by any individual who uses the unit under an arrangement which enables the taxpayer to use some other dwelling unit (whether or not a rental is charged for the use of such other unit); or

(C) by any individual (other than an employee with respect to whose use section 119 applies), unless for such day the dwelling unit is rented for a rental which, under the facts and circumstances, is fair rental. The Secretary shall prescribe regulations with respect to the circumstances under which use of the unit for repairs and annual maintenance will not constitute personal use under this paragraph, except that if the taxpayer is engaged in repair and maintenance on a substantially full time basis for any day, such authority shall not allow the Secretary to treat a dwelling unit as being used for personal use by the taxpayer on such day merely because other individuals who are on the premises on such day are not so engaged.

(3) Rental to family member, etc., for use as principal residence.

(A) In general. A taxpayer shall not be treated as using a dwelling unit for personal purposes by reason of a rental arrangement for any period if for such period such dwelling unit is rented, at a fair rental, to any person for use as such person's principal residence.

(B) Special rules for rental to person having interest in unit.

(i) Rental must be pursuant to shared equity financing agreement. Subparagraph (A) shall apply to a rental to a person who has an interest in the dwelling unit only if such rental is pursuant to a shared equity financing agreement.

(ii) Determination of fair rental. In the case of a rental pursuant to a shared equity financing agreement, fair rental shall be determined as of the time the agreement is entered into and by taking into account the occupant's qualified ownership interest.

(C) Shared equity financing agreement. For purposes of this paragraph, the term "shared equity financing agreement" means an agreement under which—

(i) 2 or more persons acquire qualified ownership interests in a dwelling unit, and

(ii) the person (or persons) holding 1 or more of such interests—

(I) is entitled to occupy the dwelling unit for use as a principal residence, and

(II) is required to pay rent to 1 or more other persons holding qualified ownership interests in the dwelling unit.



(D) Qualified ownership interest. For purposes of this paragraph, the term "qualified ownership interest" means an undivided interest for more than 50 years in the entire dwelling unit and appurtenant land being acquired in the transaction to which the shared equity financing agreement relates.

(4) Rental of principal residence.

(A) In general. For purposes of applying subsection (c)(5) to deductions allocable to a qualified rental period, a taxpayer shall not be considered to have used a dwelling unit for personal purposes for any day during the taxable year which occurs before or after a qualified rental period described in subparagraph (B)(i), or before a qualified rental period described in subparagraph (B)(ii), if with respect to such day such unit

constitutes the principal residence (within the meaning of section 121) of the taxpayer.

(B) Qualified rental period. For purposes of subparagraph (A), the term "qualified rental period" means a consecutive period of—

- (i) 12 or more months which begins or ends in such taxable year, or
- (ii) less than 12 months which begins in such taxable year and at the end of which such dwelling unit is sold or exchanged, and for which such unit is rented, or is held for rental, at a fair rental.