

Internal Revenue Code Section 469(h)(5)

Passive activity losses and credits limited

(a) Disallowance.

(1) In general.

If for any taxable year the taxpayer is described in paragraph (2) , neither-

- (A) the passive activity loss, nor
- (B) the passive activity credit,

for the taxable year shall be allowed.

(2) Persons described.

The following are described in this paragraph :

- (A) any individual, estate, or trust,
- (B) any closely held C corporation, and
- (C) any personal service corporation.

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(h) Material participation defined.

For purposes of this section -

(1) In general.

A taxpayer shall be treated as materially participating in an activity only if the taxpayer is involved in the operations of the activity on a basis which is-

- (A) regular,
- (B) continuous, and
- (C) substantial.

(2) Interests in limited partnerships.

Except as provided in regulations, no interest in a limited partnership as a limited partner shall be treated as an interest with respect to which a taxpayer materially participates.

(3) Treatment of certain retired individuals and surviving spouses.

A taxpayer shall be treated as materially participating in any farming activity for a taxable year if paragraph (4) or (5) of section 2032A(b) would cause the requirements of section 2032A(b)(1)(C)(ii) to be met with respect to real property used in such activity if such taxpayer had died during the taxable year.

(4) Certain closely held C corporations and personal service corporations.

A closely held C corporation or personal service corporation shall be treated as materially participating in an activity only if-

(A) 1 or more shareholders holding stock representing more than 50 percent (by value) of the outstanding stock of such corporation materially participate in such activity, or

(B) in the case of a closely held C corporation (other than a personal service corporation), the requirements of section 465(c)(7)(C) (without regard to clause (iv)) are met with respect to such activity.



(5) Participation by spouse.

In determining whether a taxpayer materially participates, the participation of the spouse of the taxpayer shall be taken into account.

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