

Internal Revenue Code Section 469(j)(12)

Passive activity losses and credits limited.

(j) Other definitions and special rules. For purposes of this section—


- (1) Closely held C corporation. The term "closely held C corporation" means any C corporation described in section 465(a)(1)(B).
- (2) Personal service corporation. The term "personal service corporation" has the meaning given such term by section 269A(b)(1), except that section 269A(b)(2) shall be applied—

(A) by substituting "any" for "more than 10 percent", and

(B) by substituting "any" for "50 percent or more in value" in section 318(a)(2)(C).

A corporation shall not be treated as a personal service corporation unless more than 10 percent of the stock (by value) in such corporation is held by employee-owners (within the meaning of section 269A(b)(2), as modified by the preceding sentence).

- (3) Regular tax liability. The term "regular tax liability" has the meaning given such term by section 26(b).
- (4) Allocation of passive activity loss and credit. The passive activity loss and the passive activity credit (and the \$25,000 amount under subsection (i)) shall be allocated to activities, and within activities, on a pro rata basis in such manner as the Secretary may prescribe.
- (5) Deduction equivalent. The deduction equivalent of credits from a passive activity for any taxable year is the amount which (if allowed as a deduction) would reduce the regular tax liability for such taxable year by an amount equal to such credits.
- (6) Special rule for gifts. In the case of a disposition of any interest in a passive activity by gift—
 - (A) the basis of such interest immediately before the transfer shall be increased by the amount of any passive activity losses allocable to such interest with respect to which a deduction has not been allowed by reason of subsection (a), and
 - (B) such losses shall not be allowable as a deduction for any taxable year.

- (7) Qualified residence interest. The passive activity loss of a taxpayer shall be computed without regard to qualified residence interest (within the meaning of section 163(h)(3)).
- (8) Rental activity. The term "rental activity" means any activity where payments are principally for the use of tangible property.
- (9) Election to increase basis of property by amount of disallowed credit. For purposes of determining gain or loss from a disposition of any property to which subsection (g)(1) applies, the transferor may elect to increase the basis of such property immediately before the transfer by an amount equal to the portion of any unused credit allowable under this chapter which reduced the basis of such property for the taxable year in which such credit arose. If the taxpayer elects the application of this paragraph, such portion of the passive activity credit of such taxpayer shall not be allowed for any taxable year.
- (10) Coordination with section 280A. If a passive activity involves the use of a dwelling unit to which section 280A(c)(5) applies for any taxable year, any income, deduction, gain, or loss allocable to such use shall not be taken into account for purposes of this section for such taxable year.
- (11) Aggregation of members of affiliated groups. Except as provided in regulations, all members of an affiliated group which files a consolidated return shall be treated as 1 corporation.
-  (12) Special rule for distributions by estates or trusts. If any interest in a passive activity is distributed by an estate or trust—

(A) the basis of such interest immediately before such distribution shall be increased by the amount of any passive activity losses allocable to such interest, and

(B) such losses shall not be allowable as a deduction for any taxable year.