

Instructions for Form 8582

2023

Passive Activity Loss Limitations

Volume 1 of 2



Department of the Treasury
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Passive Activity Loss Limitations

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about developments related to Form 8582 and its instructions, such as legislation enacted after they were published, go to [IRS.gov/Form8582](https://www.irs.gov/Form8582).

General Instructions

Reminders

Prior year unallowed commercial revitalization deduction (CRD). If you have prior year unallowed CRDs limited by the passive loss rules, you may continue to include them in the calculations as shown in the *Specific Instructions*, beginning with *Part I—2023 Passive Activity Loss*, later.

Excess business loss limitation. If you are a noncorporate taxpayer and have allowable business losses after taking into account first the at-risk limitations and then the passive loss limitations (this form), your losses may be subject to the excess business loss limitation. After taking into account all the other loss limitations, complete Form 461, Limitation on Business Losses, to figure the amount of your excess business loss. See Form 461 and its instructions for details on the excess business loss limitation.

Reporting prior year unallowed losses.

Form 8582 must generally be filed by taxpayers who have an overall gain (including any prior year unallowed losses) from business or rental passive activities. See Exception under *Who Must File*, later.

Regrouping due to Net Investment

Income Tax. You may be able to regroup your activities if you're subject to the Net Investment Income Tax. See Regrouping Due

to Net Investment Income Tax under Grouping of Activities, later, for more information.

Purpose of Form

Form 8582 is used by noncorporate taxpayers to figure the amount of any passive activity loss (PAL) for the current tax year and to report the application of prior year unallowed PALs.

A PAL occurs when total losses (including prior year unallowed losses) from all your passive activities exceed the total income from all your passive activities. Generally, passive activities include the following.

- Trade or business activities in which you did not materially participate for the tax year.
- Rental activities, regardless of your participation.

PALs can't be used to offset income from nonpassive activities. However, a special allowance for rental real estate activities may allow some losses even if the losses exceed passive income.

PALs not allowed in the current year are carried forward until they're allowed either against passive activity income; against the special allowance, if applicable; or when you sell or exchange your entire interest in the activity in a fully taxable transaction to an unrelated party.

For more information, see Pub. 925, Passive Activity and At-Risk Rules.

Note. Corporations subject to the passive activity rules must use Form 8810, Corporate Passive Activity Loss and Credit Limitations.

Who Must File

Form 8582 is filed by individuals, estates, and trusts who have passive activity deductions

(including prior year unallowed losses).
However, you don't have to file Form 8582 if you meet the following exception.

Exception

You actively participated in rental real estate activities (see *Special Allowance for Rental Real Estate Activities*, later), and you meet all of the following conditions.

- Rental real estate activities with active participation were your only passive activities.
- You have no prior year unallowed losses from these (or any other passive) activities.
- Your total loss from the rental real estate activities wasn't more than \$25,000 (\$12,500 if married filing separately).
- If you're married filing separately, you lived apart from your spouse all year.

- You have no current or prior year unallowed credits from a passive activity.
- Your modified adjusted gross income (see the instructions for line 6, later) was not more than \$100,000 (not more than \$50,000 if married filing separately).
- You don't hold any interest in a rental real estate activity as a limited partner or as a beneficiary of an estate or a trust.

If all the above conditions are met, your rental real estate losses are not limited, and you don't need to complete Form 8582. Enter losses reported on Schedule E (Form 1040), Supplemental Income and Loss, Part I, line 21, on Schedule E (Form 1040), Part I, line 22. For losses from a partnership or an S corporation, enter the amount of the allowable loss from Schedule K-1 on Schedule E (Form 1040), Part II, column (g). Enter losses reported on line 32 of Form 4835, Farm Rental Income and Expenses, on Form 4835, line 34c.

Coordination With Other Limitations

Generally, PALs are subject to other limitations (for example, basis and at-risk limitations) before they're subject to the passive loss limitations. Once a loss becomes allowable under these other limitations, you must determine whether the loss is limited under the passive loss rules. See Form 6198, *At-Risk Limitations*, for details on the at-risk rules. Also, capital losses that are allowable under the passive loss rules may be limited under the capital loss limitations of section 1211. Percentage depletion deductions that are allowable under the passive loss rules may be limited under section 613A(d).

If you have allowable business losses after taking into account the loss limitations discussed above and computing the allowable passive losses on this form, your losses may be subject to the excess business loss limitation. Complete Form 461 to figure the

amount of your excess business loss. Any disallowed loss resulting from this limitation will be treated as a net operating loss (NOL) that must be carried forward and deducted in a subsequent year. See Form 461 and its instructions for details on the excess business loss limitation.

Definitions

Except as otherwise indicated, the following terms in these instructions are defined as shown below.

Net income. This is the excess of current year income over current year deductions from the activity. This includes any current year gains or losses from the disposition of assets or an interest in the activity.

Net loss. This is the excess of current year deductions over current year income from the activity. This includes any current year gains or losses from the disposition of assets or an interest in the activity.

Overall gain. This is the excess of the “net income” from the activity over the prior year unallowed losses from the activity.

Overall loss. This is (a) the excess of the prior year unallowed losses from the activity over the “net income” from the activity, or (b) the prior year unallowed losses from the activity plus the “net loss” from the activity.

Prior year unallowed losses. These are the losses from an activity that were disallowed under the PAL limitations in a prior year and carried forward to the tax year under section 469(b). See Regulations section 1.469-1(f)(4) and Pub. 925.

Activities That Are Not Passive Activities

The following aren’t passive activities.

1. Trade or business activities in which you materially participated for the tax year.

2. Any rental real estate activity in which you materially participated if you were a “real estate professional” for the tax year. You were a real estate professional only if:
 - a. More than half of the personal services you performed in trades or businesses during the tax year were performed in real property trades or businesses in which you materially participated, and
 - b. You performed more than 750 hours of services during the tax year in real property trades or businesses in which you materially participated.

For purposes of whether you materially participated under item (2), each interest in rental real estate is a separate activity, unless you elect to treat all interests in rental real estate as one activity. For details on making

this election, see the Instructions for Schedule E (Form 1040).

If you're married filing jointly, one spouse must separately meet both (2)(a) and (2)(b) without taking into account services performed by the other spouse.

A real property trade or business is any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business.

Real property includes land, buildings, and other inherently permanent structures permanently affixed to land. Any interest in real property, including fee ownership, co-ownership, leasehold, option, or similar interest is real property. Tenant improvements to land, buildings, or other structures that are inherently permanent or otherwise classified as real property are real property for this purpose. See Regulations section 1.469-9(b)(2) for more definitions

and information about determining whether a trade or business is a real property trade or business.

For examples of the determination of whether a trade or business is a real property trade or business, see Regulations section 1.469-9(b)(2)(iii).

Services you performed as an employee aren't treated as performed in a real property trade or business unless you owned more than 5% of the stock (or more than 5% of the capital or profits interest) in the employer.

Note. If a rental real estate activity isn't a passive activity for the current year, any prior year unallowed loss is treated as a loss from a former passive activity. See Former Passive Activities, later.

3. A working interest in an oil or gas well. Your working interest must be held directly or through an entity that doesn't limit your liability (such as a

general partner interest in a partnership). In this case, it doesn't matter whether you materially participated in the activity for the tax year.

If, however, your liability was limited for part of the year (for example, you converted your general partner interest to a limited partner interest during the year), some of your income and losses from the working interest may be treated as passive activity gross income and passive activity deductions. See Temporary Regulations section 1.469-1T(e)(4)(ii).

4. The rental of a dwelling unit you used as a residence if section 280A(c)(5) applies. This section applies if you rented out a dwelling unit that you also used as a home during the year for a number of days that exceeds the greater of 14 days or 10% of the

number of days during the year that the home was rented at a fair rental.

5. An activity of trading personal property for the account of owners of interests in the activity. For purposes of this rule, personal property means property that's actively traded, such as stocks, bonds, and other securities. See Temporary Regulations section 1.469-1T(e)(6) for more details.

Generally, income and losses from these activities aren't entered on Form 8582.

However, losses from these activities may be subject to limitations other than the passive loss rules.

Trade or Business Activities

A trade or business activity is an activity (other than a rental activity or an activity treated as incidental to an activity of holding property for investment) that:

1. Involves the conduct of a trade or business (within the meaning of section 162),
2. Is conducted in anticipation of starting a trade or business, or
3. Involves research or experimental expenditures deductible under section 174.

Trade or business activities are generally reported on Schedule C (Form 1040), Profit or Loss From Business (Sole Proprietorship); Schedule F (Form 1040), Profit or Loss From Farming; or in Part II or III of Schedule E (Form 1040). For trade or business activities that are significant participation passive activities (defined in item 4 under Tests for individuals, later), see Pub. 925 for how to report their income or losses.

Rental Activities

A rental activity is a passive activity even if you materially participated in the activity (unless it's a rental real estate activity in which you materially participated and you were a real estate professional).

An activity is a rental activity if tangible property (real or personal) is used by customers or held for use by customers and the gross income (or expected gross income) from the activity represents amounts paid (or to be paid) mainly for the use of the property. It doesn't matter whether the use is under a lease, a service contract, or some other arrangement.

However, if you meet any of the five exceptions below, the rental of the property isn't treated as a rental activity. See *Reporting Income and Losses From the Activities*, later, if you meet any of the exceptions.

Exceptions

An activity is not a rental activity if any of the following apply.

1. The average period of customer use is:
 - a. 7 days or less, or
 - b. 30 days or less and significant personal services were provided in making the rental property available for customer use.

Figure the average period of customer use for a class of property by dividing the total number of days in all rental periods by the number of rentals during the tax year. If the activity involves renting more than one class of property, multiply the average period of customer use of each class by the ratio of the gross rental income from that class to the activity's total gross rental income. The activity's average period of customer use equals the sum of these class-by-class

average periods weighted by gross income. See Regulations section 1.469-1(e)(3)(iii).

Significant personal services include only services performed by individuals. To determine if personal services are significant, all relevant facts and circumstances are taken into consideration, including the frequency of the services, the type and amount of labor required to perform the services, and the value of the services relative to the amount charged for use of the property.

2. Extraordinary personal services were provided in making the rental property available for customer use. This applies only if the services are performed by individuals and the customers' use of the property is incidental to their receipt of the services.
3. Rental of the property is incidental to a nonrental activity.

The rental of property is incidental to an activity of holding property for investment if the main purpose of holding the property is to realize a gain from its appreciation and the gross rental income is less than 2% of the smaller of the unadjusted basis or the fair market value (FMV) of the property.

Unadjusted basis is the cost of the property without regard to depreciation deductions or any other basis adjustment described in section 1016.

The rental of property is incidental to a trade or business activity if:

- a. You own an interest in the trade or business activity during the tax year,
- b. The rental property was mainly used in the trade or business activity during the tax year or during at least 2 of the 5 preceding tax years, and
- c. The gross rental income from the property is less than 2% of the smaller

of the unadjusted basis or the FMV of the property.

Lodging provided for the employer's convenience to an employee or the employee's spouse or dependents is incidental to the activity or activities in which the employee performs services.

5. You customarily make the rental property available during defined business hours for nonexclusive use by various customers.
6. You provide property for use in a nonrental activity of a partnership, S corporation, or a joint venture in your capacity as an owner of an interest in the partnership, S corporation, or joint venture.

Example. 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 unless the partnership is engaged in a rental activity.

Also, a partner's gross income from a guaranteed payment under section 707(c) isn't income from a rental activity. The determination of whether the property used in the activity is provided in the partner's capacity as an owner of an interest in the partnership is made on the basis of all the facts and circumstances.

Reporting Income and Losses From the Activities

If an activity meets any of the five exceptions listed above, it's not a rental activity. You must then determine:

1. Whether your rental of the property is a trade or business activity (see *Trade or Business Activities*, earlier), and, if so,

2. Whether you materially participated in the activity for the tax year (see Material Participation, later).

If the activity is a trade or business activity in which you didn't materially participate, enter the income and losses from the activity in Part V.

If the activity is a trade or business activity in which you did materially participate, report any income or loss from the activity on the forms or schedules normally used.

If the rental activity didn't meet any of the five exceptions, it's generally a passive activity. However, special rules apply if you conduct the rental activity through a publicly traded partnership (PTP) or if any of the rules described under Recharacterization of Passive Income, later, apply. Also see the PTP rules, later.

If none of the special rules apply, enter the income and losses from the passive rental activity in Parts IV or V. See the instructions for Parts IV and V for details.

Special Allowance for Rental Real Estate Activities

Active participation. If you actively participated in a passive rental real estate activity, you may be able to deduct up to \$25,000 of loss from the activity from your nonpassive income. This special allowance is an exception to the general rule disallowing losses in excess of income from passive activities.

The special allowance isn't available if you were married, are filing a separate return for the year, and lived with your spouse at any time during the year.

Only an individual, a qualifying estate, or a qualified revocable trust that made an election to treat the trust as part of the

decedent's estate may actively participate in a rental real estate activity. Unless future regulations provide an exception, limited partners are not treated as actively participating in a partnership's rental real estate activity.

A qualifying estate is the estate of a decedent for tax years ending less than 2 years after the date of the decedent's death if the decedent would've satisfied the active participation requirements for the rental real estate activity for the tax year the decedent died.

A qualified revocable trust may elect to be treated as part of a decedent's estate for purposes of the special allowance for active participation in rental real estate activities. The election must be made by both the executor (if any) of the decedent's estate and the trustee of the revocable trust. For details, see Regulations section 1.645-1. To make this election, see the instructions on Form 8855,

Election To Treat a Qualified Revocable Trust as Part of an Estate.

You aren't considered to actively participate in a rental real estate activity if at any time during the tax year your interest (including your spouse's interest) in the activity was less than 10% (by value) of all interests in the activity.

Active participation is a less stringent requirement than material participation (see *Material Participation*, later). You may be treated as actively participating if, for example, you participated in making management decisions or arranged for others to provide services (such as repairs) in a significant and bona fide sense. Management decisions that may count as active participation include:

- Approving new tenants,
- Deciding on rental terms,

- Approving capital or repair expenditures, and
- Other similar decisions. The maximum special allowance is:
 - \$25,000 for single individuals and married individuals filing a joint return for the tax year.
 - \$12,500 for married individuals who file separate returns for the tax year and lived apart from their spouses at all times during the tax year.
 - \$25,000 for a qualifying estate, reduced by the special allowance for which the surviving spouse qualified.

Modified adjusted gross income

limitation. If your modified adjusted gross income (see the instructions for line 6, later) is \$100,000 or less (\$50,000 or less if married filing separately), your loss is deductible up to the amount of the maximum

special allowance referred to in the preceding paragraph.

If your modified adjusted gross income is more than \$100,000 (\$50,000 if married filing separately) but less than \$150,000 (\$75,000 if married filing separately), your special allowance is limited to 50% of the difference between \$150,000 (\$75,000 if married filing separately) and your modified adjusted gross income.

Generally, if your modified adjusted gross income is \$150,000 or more (\$75,000 or more if married filing separately), there is no special allowance.

If you qualify under the active participation rules, use Part IV. See the instructions for Part IV, later.

Material Participation

For the material participation tests listed below, participation generally includes any work done in connection with an activity if

you owned an interest in the activity at the time you did the work. The capacity in which you did the work doesn't matter. However, work isn't participation if:

- It isn't work that an owner would customarily do in the same type of activity, and
- One of your main reasons for doing the work was to avoid the disallowance of losses or credits from the activity under the passive activity rules.

Proof of participation. You may prove your participation in an activity by any reasonable means. You don't have to maintain contemporaneous daily time reports, logs, or similar documents if you can establish your participation by other reasonable means. For this purpose, reasonable means include, but are not limited to, identifying services performed over a period of time and the approximate number of hours spent performing the services during that period,

based on appointment books, calendars, or narrative summaries.

Tests for individuals. You materially participated for the tax year in an activity if you satisfy at least one of the following tests.

1. You participated in the activity for more than 500 hours.
2. Your participation in the activity for the tax year was substantially all of the participation in the activity of all individuals (including individuals who didn't own any interest in the activity) for the year.
3. You participated in the activity for more than 100 hours during the tax year, and you participated at least as much as any other individual (including individuals who didn't own any interest in the activity) for the year.

4. The activity is a significant participation activity for the tax year, and you participated in all significant participation activities during the year for more than 500 hours.

A significant participation activity is any trade or business activity in which you participated for more than 100 hours during the year and in which you didn't materially participate under any of the material participation tests (other than this fourth test).

5. You materially participated in the activity (other than by meeting this fifth test) for any 5 (whether or not consecutive) of the 10 immediately preceding tax years.
6. The activity is a personal service activity in which you materially participated for any 3 (whether or not consecutive) preceding tax years.

An activity is a personal service activity if it involves the performance of personal services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, or in any other trade or business in which capital isn't a material income-producing factor.

7. Based on all the facts and circumstances, you participated in the activity on a regular, continuous, and substantial basis during the tax year.

You didn't materially participate in the activity under this seventh test, however, if you participated in the activity for 100 hours or less during the tax year.

Your participation in managing the activity doesn't count in determining whether you materially participated under this test if:

- a. Any person (except you) received compensation for performing services in the management of the activity, or

- b. Any individual spent more hours during the tax year

performing services in the management of the activity than you did (regardless of whether the individual was compensated for the management services).

Test for a spouse. Participation by your spouse during the tax year in an activity you own may be counted as your participation in the activity even if your spouse didn't own an interest in the activity and whether or not you and your spouse file a joint return for the tax year.

Tests for investors. Work done as an investor in an activity isn't treated as participation unless you were directly involved in the day-to-day management or operations of the activity. For purposes of this test, work done as an investor includes the following.

1. Studying and reviewing financial statements or reports on operations of the activity.
2. Preparing or compiling summaries or analyses of the finances or operations of the activity for your own use.
3. Monitoring the finances or operations of the activity in a nonmanagerial capacity.

Special rules for limited partners. If you were a limited partner in an activity, you generally didn't materially participate in the activity. You did materially participate in the activity, however, if you met material participation test 1, 5, or 6 under Tests for individuals, earlier, for the tax year.

However, for purposes of the material participation tests, you aren't treated as a limited partner if you also were a general partner in the partnership at all times during the partnership's tax year ending with or

within your tax year (or, if shorter, during the portion of the partnership's tax year in which you directly or indirectly owned your limited partner interest).

Special rules for certain retired or disabled farmers and surviving spouses of farmers. Certain retired or disabled farmers and surviving spouses of farmers are treated as materially participating in a farming activity if the real property used in the activity would meet the estate tax rules for special valuation of farm property passed from a qualifying decedent. See Temporary Regulations section 1.469-5T(h)(2).

Estates and trusts. The PAL limitations apply in figuring the distributable net income and taxable income of an estate or trust. The rules for determining material participation for this purpose haven't yet been issued.

Grouping of Activities

Generally, one or more trade or business activities or rental activities may be treated as a single activity if the activities make up an appropriate economic unit for the measurement of gain or loss under the passive activity rules.

Whether activities make up an appropriate economic unit depends on all the relevant facts and circumstances. The factors given the greatest weight in determining whether activities make up an appropriate economic unit are:

1. Similarities and differences in types of trades or businesses,
2. The extent of common control,
3. The extent of common ownership,
4. Geographical location, and
5. Interdependencies between or among the activities.

Example. You have a significant ownership interest in a bakery and a movie theater in Baltimore and in a bakery and a movie theater in Philadelphia. Depending on all the relevant facts and circumstances, there may be more than one reasonable method for grouping your activities. For instance, the following groupings may or may not be permissible.

- A single activity.
- A movie theater activity and a bakery activity.
- A Baltimore activity and a Philadelphia activity.
- Four separate activities.

Once you choose a grouping under these rules, you must continue using that grouping in later tax years unless it's determined that the original grouping was clearly inappropriate or a material change in the

facts and circumstances makes it clearly inappropriate.

The IRS may regroup your activities if your grouping fails to reflect one or more appropriate economic units and one of the primary purposes of your grouping is to avoid the passive activity limitations.

Limitation on grouping certain activities.

The following activities may not be grouped together.

1. A rental activity with a trade or business activity unless the activities being grouped together make up an appropriate economic unit and:
 - a. The rental activity is insubstantial relative to the trade or business activity or vice versa, or
 - b. Each owner of the trade or business activity has the same proportionate ownership interest in the rental activity. If so, the

portion of the rental activity involving the rental of property used in the trade or business activity may be grouped with the trade or business activity.

2. An activity involving the rental of real property with an activity involving the rental of personal property (except personal property provided in connection with the real property or vice versa).
3. Any activity with another activity in a different type of business and in which you hold an interest as a limited partner if that other activity engages in holding, producing, or distributing motion picture films or videotapes; farming; leasing section 1245 property; or exploring for or exploiting oil and gas resources or geothermal deposits.

4. Any trading activities in which you don't materially participate. A trading activity is an activity of trading in personal property. For this purpose, personal property is any personal property that is actively traded, for example, financial securities. A taxpayer who does not materially participate in a trading activity is prohibited from grouping the activity with any other activity, including any other trading activity. The prohibition on grouping is effective for taxable years beginning on or after March 22, 2021. If you are a calendar year taxpayer, the new provisions first applied to you in calendar year 2022.

Activities conducted through partnerships, S corporations, and C corporations subject to section 469. Once a partnership or corporation determines its activities under these rules, a partner or

shareholder may use these rules to group those activities with:

- Each other,
- Activities conducted directly by the partner or shareholder, or
- Activities conducted through other partnerships and corporations.

A partner or shareholder may not treat as separate activities those activities grouped together by the partnership or corporation.

Regrouping Due to Net Investment Income Tax

You may be able to regroup your activities, as described below, if you're subject to the Net Investment Income Tax (NIIT) for the first time. For detailed information, see Regulations section 1.469-11(b)(3)(iv).

Regrouping on an original return. Under the NIIT fresh start election, you may regroup for the first tax year you're subject to the NIIT (without regard to the effect of regrouping). You may regroup only once under this election and that regrouping will apply to the tax year for which you regroup and all future tax years. You're eligible to regroup if:

1. You weren't previously subject to the NIIT;
2. The amount you would have entered on Form 8960, line 12, without the regrouping, would have been greater than zero; and
3. The amount you would have entered on Form 8960, line 13, without the regrouping, would have been greater than the amount you would have entered on Form 8960, line 14, without the regrouping.

Regrouping on an amended return. You may regroup your activities on an amended tax return, but only if you weren't subject to the NIIT on your original return (or previously amended return). You're eligible if:

1. You weren't previously subject to the NIIT for the tax year for which you're filing an amended return or any prior tax year;
2. The changes on the amended return cause you to be subject to the NIIT for the first time beginning in the taxable year for which you're amending the return;
3. The limitation period for assessments under section 6501 hasn't ended;
4. The changes on your amended return cause the amount on Form 8960, line 12, of your amended return to be greater than zero; and

5. The changes on your amended return cause the amount on Form 8960, line 13, of your amended return to be greater than the amount entered on Form 8960, line 14.

This rule applies equally to changes to modified adjusted gross income or net investment income upon an IRS examination.

Manner of regrouping. If you regroup your activities under this rule, you must attach to your original or amended return, as applicable, a statement that satisfies the requirements described in *Regrouping* under *Disclosure Requirement* next.

Disclosure Requirement

The following disclosure requirements for groupings apply. You're required to report certain changes to your groupings that occur during the tax year to the IRS. If you fail to report these changes, each trade or business activity or rental activity will be treated as a

separate activity. You'll be considered to have made a timely disclosure if you filed all affected income tax returns consistent with the claimed grouping and make the required disclosure on the income tax return for the year in which you first discovered the failure to disclose. If the IRS discovered the failure to disclose, you must have reasonable cause for not making the required disclosure. For more information on disclosure requirements, see

Revenue Procedure 2010-13, available at [IRS.gov/irb/ 2010-04 IRB#RP-2010-13](https://www.irs.gov/irb/2010-04_IRB#RP-2010-13).

New grouping. You must file a written statement with your original income tax return for the first tax year in which two or more activities are originally grouped into a single activity. The statement must provide the names, addresses, and employer identification numbers (EINs), if applicable, for the activities being grouped as a single activity. In addition, the statement must

contain a declaration that the grouped activities make up an appropriate economic unit for the measurement of gain or loss under the passive activity rules.

Addition to an existing grouping. You must file a written statement with your original income tax return for the tax year in which you add a new activity to an existing group. The statement must provide the name, address, and EIN, if applicable, for the activity that's being added and for the activities in the existing group. In addition, the statement must contain a declaration that the activities make up an appropriate economic unit for the measurement of gain or loss under the passive activity rules.

Regrouping. You must file a written statement with your original income tax return for the tax year in which you regroup the activities. The statement must provide the names, addresses, and EINs, if applicable, for the activities that are being regrouped. If two

or more activities are being regrouped into a single activity, the statement must contain a declaration that the regrouped activities make up an appropriate economic unit for the measurement of gain or loss under the passive activity rules. In addition, the statement must contain an explanation of the material change in the facts and circumstances that made the original grouping clearly inappropriate.

Passive Activity Income and Deductions

Take into account only passive activity income and passive activity deductions to figure your net income or net loss from all passive activities or any passive activity.

If your passive activity is reported on Schedule C, E, or F, and the activity has no prior year unallowed losses or any gain or loss from the disposition of assets or an interest in the activity, take into account only

the passive activity income and passive activity deductions from the activity to figure the amount to enter on Form 8582.

If you own an interest in a passive activity through a partnership or an S corporation, the partnership or S corporation will generally provide you with the net income or net loss from the passive activity. If, however, the partnership or S corporation must state an item of gross income or deduction separately to you, and the gross income or deduction is passive activity gross income or a passive activity deduction (respectively), include that amount in the net income or net loss entered on Form 8582.



The partnership or S corporation doesn't have a record of your prior year unallowed losses from the passive activities of the partnership or S corporation. If you had prior year unallowed losses from these activities, they can be found in column (c) of your 2022 Part VIII.

Passive Activity Income

To figure your overall gain or loss from all passive activities or any passive activity, take into account only passive activity income. Don't enter income that isn't passive activity income on Form 8582.

Passive activity income includes all income from passive activities (with certain exceptions described in Temporary Regulations section 1.469-2T(c)(2) and Regulations section 1.469-2(c)(2)), including gain from the disposition of an interest in a passive activity and from the disposition of property used in a passive activity at the time of the disposition. Passive activity income doesn't include the following.

- Income from an activity that isn't a passive activity.
- Portfolio income, including interest (other than self-charged interest treated as passive activity income, discussed later),

dividends, annuities, and royalties not derived in the ordinary course of a trade or business, and gain or loss from the disposition of property that produces portfolio income or is held for investment (see section 163(d)(5)). See Temporary Regulations section 1.469-2T(c)(3).

- Alaska Permanent Fund dividends.
- Personal service income, including salaries, wages, commissions, self-employment income from trade or business activities in which you materially participated for the tax year, deferred compensation, taxable social security and other retirement benefits, and payments from partnerships to partners for personal services. See Temporary Regulations section 1.469-2T(c)(4).
- Income from positive section 481 adjustments allocated to activities other than passive activities. See Temporary Regulations section 1.469-2T(c)(5).

- Income or gain from investments of working capital.
- Income from an oil or gas property if you treated any loss from a working interest in the property for any tax year beginning after 1986 as a nonpassive loss under the rule excluding working interests in oil and gas wells from passive activities (see item 3 under Activities That Are Not Passive Activities, earlier). See Regulations section 1.469-2(c)(6).
- Any income from intangible property if your personal efforts significantly contributed to the creation of the property.
- Any income treated as not from a passive activity under Temporary Regulations section 1.469-2T(f) and Regulations section 1.469-2(f). See Recharacterization of Passive Income, later.

- Overall gain from any interest in a PTP (see item 2 under Passive activity loss rules for partners in PTPs, later).
- State, local, and foreign income tax refunds.
- Income from a covenant not to compete.
- Any reimbursement of a casualty or theft loss included in income as recovery of all or part of a prior year loss deduction if the deduction for the loss wasn't treated as a passive activity deduction.
- Cancellation of debt income to the extent that at the time the debt was discharged, the debt wasn't properly allocable under Temporary Regulations section 1.163-8T to passive activities.

Recharacterization of Passive Income

Certain income from passive activities must be recharacterized and excluded from passive activity income. The amount of income

recharacterized equals the net income from the sources given below. If during the tax year you received net income from any of these sources (either directly or through a partnership or an S corporation), see Pub. 925 to find out how to report net income or loss from these sources. For more information, see Temporary Regulations section 1.469-2T(f) and Regulations section 1.469-2(f).

Income from the following sources may be subject to the net income recharacterization rules.

- Significant participation passive activities defined in item 4 under Tests for individuals, earlier.
- Rental of property if less than 30% of the unadjusted basis of the property is subject to depreciation.
- Passive equity-financed lending activities.

- Rental of property incidental to a development activity.
- Rental of property to a nonpassive activity.
- Acquisition of an interest in a pass-through entity that licenses intangible property.

Passive Activity Deductions

To figure your overall gain or overall loss from all passive activities or any passive activity, take into account only passive activity deductions.

Passive activity deductions include all deductions from activities that are passive activities for the current tax year and all deductions from passive activities that were disallowed under the PAL rules in prior tax years and carried forward to the current tax year. See Regulations section 1.469-1(f)(4).

Passive activity deductions include any loss from a disposition of property used in a passive activity at the time of the disposition and any loss from a disposition of less than your entire interest in a passive activity. See Dispositions, later, for the treatment of losses upon disposition of your entire interest in an activity. Passive activity deductions don't include the following.

- Deductions for expenses (other than interest expense) that are clearly and directly allocable to portfolio income.
- Qualified home mortgage interest, capitalized interest expenses, and other interest expenses (except self-charged interest treated as a passive activity deduction (discussed next) and interest expenses properly allocable to passive activities).
- Losses from dispositions of property that produce portfolio income or property held for investment.

- State, local, and foreign income taxes.
- Charitable contribution deductions.
- Net operating loss deductions, percentage depletion carryovers under section 613A(d), and capital loss carryovers.
- Deductions and losses that would've been allowed for tax years beginning before 1987, but for basis or at-risk limitations.
- Net negative section 481 adjustments allocated to activities other than passive activities. See Temporary Regulations section 1.469-2T(d)(7).
- Deductions for losses attributable to a federally declared disaster.
- The deduction allowed for the deductible part of self-employment taxes.

Self-Charged Interest

Certain self-charged interest income or deductions may be treated as passive activity gross income or passive activity deductions if the loan proceeds are used in a passive activity. Generally, self-charged interest income and deductions result from loans between you and a partnership or S corporation in which you had a direct or indirect ownership interest. This includes both loans you made to the partnership or S corporation and loans the partnership or S corporation made to you. It also includes loans from one partnership or S corporation to another partnership or S corporation if each owner in the borrowing entity has the same proportional ownership interest in the lending entity.

The self-charged interest rules don't apply to your interest in a partnership or S corporation if the entity made an election under Regulations section 1.469-7(g) to avoid the