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# Real Estate Concerns for the Individual



5/17/2012



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# Today's Topics

Schedule E & Form 8825 revisions

IRC 280A and “personal use”

Mortgage interest considerations

Real estate professional including the late election under Revenue Procedure 2011-34

Foreclosure issues





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# Schedule E Revision

Physical location required

Type of property

– Split/Multi use

Personal use days

Fair rental use days

Form 8825 parallel





# Schedule E – before & after

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<b>SCHEDULE E</b> <b>(Form 1040)</b>	<b>Supplemental Income and Loss</b> (From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc.)	OMB No. 1545-0074
		<b>2010</b> Attachment Sequence No. <b>13</b>
Department of the Treasury Internal Revenue Service (99)	▶ Attach to Form 1040, 1040NR, or Form 1041. ▶ See Instructions for Schedule E (Form 1040).	
Name(s) shown on return	Your social security number	

**Part I** **Income or Loss From Rental Real Estate and Royalties** Note. If you are in the business of renting personal property, use Schedule C or C-EZ (see page E-3). If you are an individual, report farm rental income or loss from Form 4835 on page 2, line 40.

1	List the type and address of each rental real estate property:	2	For each rental real estate property listed on line 1, did you or your family use it during the tax year for personal purposes for more than the greater of:	Yes	No
A	-----	• 14 days or • 10% of the total days rented at fair rental value? (See page E-4)	A		
B	-----		B		
C	-----		C		

<b>SCHEDULE E</b> <b>(Form 1040)</b>	<b>Supplemental Income and Loss</b> (From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc.)	OMB No. 1545-0074
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Name(s) shown on return	Your social security number	

**A** Did you make any payments in 2011 that would require you to file Form(s) 1099? (see instructions)  Yes  No

**B** If "Yes," did you or will you file all required Forms 1099?  Yes  No

**Part I** **Income or Loss From Rental Real Estate and Royalties** Note. If you are in the business of renting personal property, use Schedule C or C-EZ (see instructions). If you are an individual, report farm rental income or loss from Form 4835 on page 2, line 40.

**Caution.** For each rental property listed on line 1, check the box in the last column only if you owned that property as a member of a qualified joint venture (QJV) reporting income not subject to self-employment tax.

1	Physical address of each property—street, city, state, zip	Type—from list below	2	For each rental real estate property listed, report the number of days rented at fair rental value and days with personal use. See instructions.	Fair Rental Days	Personal Use Days	QJV
A	-----		Fair Rental Days Personal Use Days QJV	A			
B	-----			B			
C	-----			C			





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# IRC 280A limitations

Dwelling unit

Allocation of personal use

– Definition of personal use

14 day / 10% rule

Excess 280A expenses

Regulation – 2011-2012 Priority  
Guidance Plan





# Mortgage Interest Considerations

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Personal residence

Debt limitation

Acquisition debt

Home equity line of credit

Revenue Ruling 2010-25

IRC 163(h) and Regulation 1.163-10T





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# Mortgage Interest Considerations (cont)

Investment interest expense

Rental real estate

Interest tracing

Regulation 1.163-8T





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# Real Estate Professional

IRC 469(c)(7) requirements

- 1/2 personal services test
- 750 hours test

Qualified trades and businesses

Annual determination – not election





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# Real Estate Professional (cont)

Material participation in rentals

Recent litigation

- Agarwal
- Jende
- Bailey





# Election to Aggregate Rentals for a RE Pro

Only applicable to RE Pro

Regulatory election – Reg. 1.469-9(g)

Late election criteria – RP 2011-34

- Failed to timely meet requirements
- Consistent treatment
- Timely filed return
- Reasonable cause (Reg. 301.9100-3)

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# Foreclosure Issues

Foreclosure to lender

Short sales

Exclusion of income – IRC 108(a)

Principal residence

Bankruptcy; Insolvency

Others

Reduction of tax attributes – IRC 108(b)





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# Summary

Schedule E & Form 8825 Revisions

IRC 280A

Mortgage interest

Real estate professional and election  
to aggregate rentals

Foreclosures

