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Material Participation, Recharacterization and Activity Based Reporting





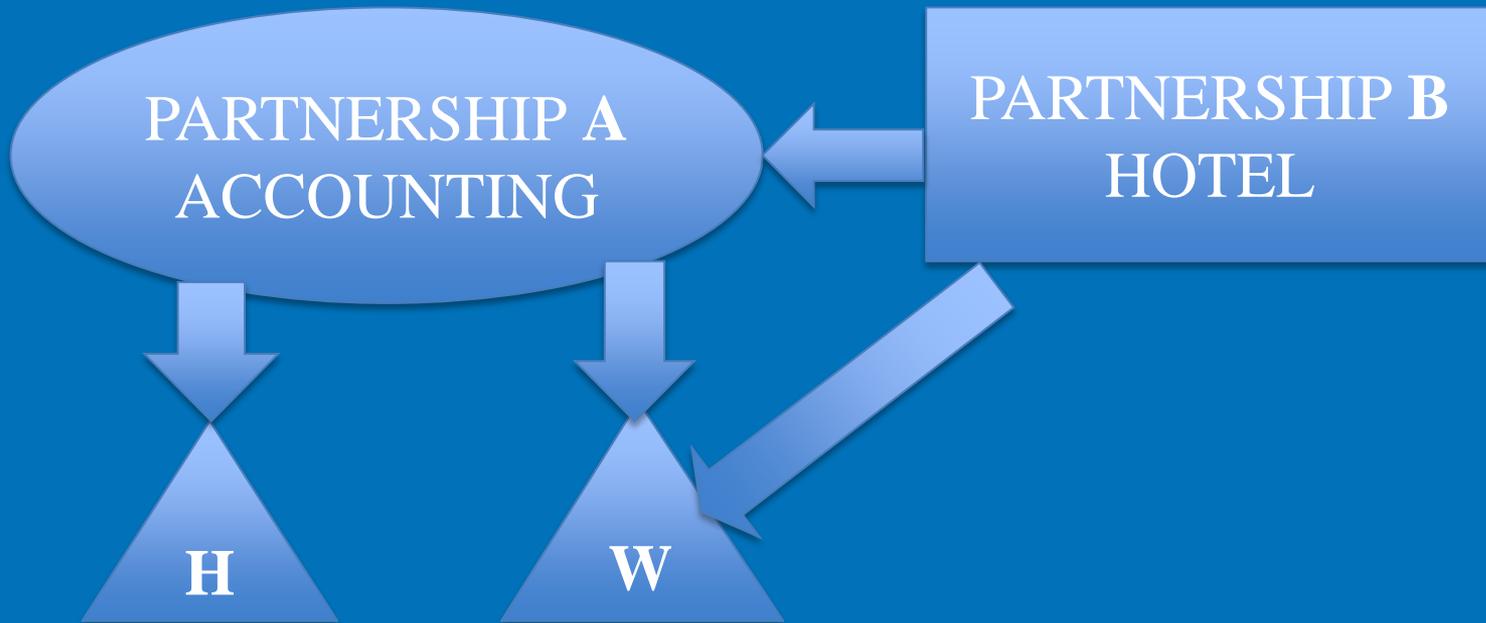
Identify the Activity

- Rental vs. Trade or Business
- Look through tiers
- Economic Grouping, Reg. 1.469-4
- RE Pro - Rental Real Estate Aggregation, Reg. 1.469-9(g)





Example





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Material Participation Quality and Quantity

- Regular, continuous, and substantial
 - IRC 469(h)(1)
- Seven tests
 - Regulation 1.469-5T(a)(1) - (7)





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Material Participation Seven Tests

1. 500 hours
2. Substantially all
3. >100 hours and more than any other individual
4. Significant Participation Activity - SPA



Material Participation Seven Tests (cont.)

5. Five of 10 prior years
6. ANY 3 prior years for personal service activity
7. Facts and Circumstances





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Recent Material Participation Cases

- Williams, T. C. Memo 2014-158
- Iversen, T. C. Memo 2012-19
- Newhart, T. C. Memo 2001-289





Recharacterization Considerations

- Self-rented property - 1.469-2(f)(6)
- SPA - 1.469-2T(f)(2)
- Land - 1.469-2T(f)(3)





Recent Recharacterization Cases

- Williams, T. C. Memo 2015-76
- Carlos, 123 TC 275
- Samarasinghe, T. C. Memo 2012-23





Activity Based Reporting (ABR)

- Flow-through entities / Tiered entities
- Reporting Responsibility
 - Schedule K-1 attachment



ABR – Looks like...

- An attachment to K-1 is required if Part III, Line 1 has more than one business activity
- Rental activities must be separately stated on K-1, Part III, Line 2 or 3
- An attachment to K-1 is required if more than one rental activity





ABR is important because...

- Material participation tests are applied separately by activity;
- The section 1231 rules are applied for each activity;
- Disposition of an interest applies by activity





Resources

- Instructions (Form 8582; Schedules K-1)
- Publication 925
- Audit Technique Guides (Passive Loss, Partnership, etc.)
- www.irs.gov





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