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# You Mean That's Taxable?

## A Primer on the Shared Economy and Taxes

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# The “Gig” Economy

- Uber
- TaskRabbit
- Airbnb

What do these have in common?



# Shared Economy

- Independent contracting
- Flexibility in time, work, leisure

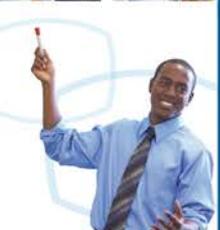
*But...*

- Tax consequences more complicated!



# Uber (and Lyft) Drivers

- *Berwick* – Labor Comm. says employee
  - U. S. District Court certifies class action
  - Other states side with Uber
- Lyft tries to settle with drivers
  - California District Court says “not enough”
  - Could go to trial
- Car service or “online app”?





# Online Rentals



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# Online Rentals – By the Code

- §280A Vacation Rentals
- §469 Passive Activities
- §1.469-1T Not Rental Activities
- §469(c)(7) Real Estate Professionals





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# Vacation Homes



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# Vacation Home Disallowance

- Is personal residence rented?
- Yes, if used personally more than greater of:
  - 14 days or
  - 10% of days rented



# Definition of Personal Use

- Personal use if used by:
  1. Owner(s)
  2. Owner's family, unless main home & FMV rent
  3. Anyone who doesn't pay FMV rent or anyone who lets owner use other property
  
- Exception for maintenance



# Vacation Home Deductions

- Cannot exceed rent
- Multiply rental use deductions by:

$$\frac{\text{\# days rented at fair market}}{\text{total \# days used for any purpose}}$$





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# Deduction Ordering

- Deductions otherwise allowed under the Code (interest & taxes)
- Deductions for rental use
- Depreciation & amortization





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# Passive Loss Rules



# §469 Passive Loss Overview

- Passive losses only deductible to the extent of passive income
- Real estate exceptions
  - Rental real estate losses of up to \$25,000 for middle-income taxpayers
  - Real estate professionals





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# §469 Passive Loss Overview

- Excess losses carried forward
- Current year passive income may be offset by prior year passive losses
- Losses are allowed if:
  - Complete disposition
  - To unrelated party
  - In taxable transaction



# What Activities Are Passive?

- Rentals, regardless of level of participation
- Trade or business, if no material participation





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# Material Participation Time Tests

1. Work 500 hours

– Tel. & travel records substantiate narrative

2. Do substantially all the work

3. 100 hours and no one does more

4. Work 500 hours in SPAs





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# Material Participation Time Tests

5. 500 hours in 5 of last 10 years

6. Personal service with 3 years of material participation

7. Facts and circumstances



# Rental Activities That Aren't!

1. Avg. rental period < 7 days
2. Avg. stay < 30 days & significant services
3. Extraordinary personal services provided



# Rental Activities That Aren't!

4. Rental is incidental to non-rental activity
  - Rent to employee at employer convenience
  - Rents < 2% of lesser of basis or FMV
5. Nonexclusive use by customers
6. Rental to entity owned by landlord





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# Short Term Rental is Business

- *Amy Harloff's* short term rental in Whistler was business activity

➤ Why do I care?



# Real Estate Professional

- Rental real estate is owned
- The 50% test
- The 750-hour test
  - Each spouse tested separately



# Real Estate Business

- The real estate businesses
  1. Development, redevelopment, conversion, construction, reconstruction, acquisition
  2. Rental and leasing
  3. Operation and management
  4. Brokerage
    - But not mortgage broker





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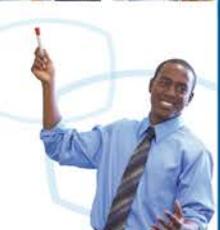
# Time Tests Cause Problems

- Either spouse may be RE pro
- Must be >5% owner to include time as an employee



# Time Tests Cause Problems

- Can't count spouse's time for RE pro  
*(Tony Goolsby)*
- Concise records & credible testimony  
 needed





- Or HomeAway or Onefinestay or FlipKey
- Is the rental income taxable?
  - 14 day or fewer rule says “no”
  - Used as a residence by taxpayer
  - Section 280A(g)





- Is it your personal residence?
  - “yes” and §280A applies
  - “no” and §469 applies
- What if I don’t own the home?
  - Could be a violation of lease





- What about occupancy/sales taxes?
  - “Host” is responsible
  - Some locations Airbnb handles
  - Some locations taxpayer must handle
  - San Diego says it can collect \$12m by taxing Airbnb-type rentals





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