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# The Gig Economy is Here to Stay What Tax Pros Need To Know

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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!



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# Uber (and Lyft) Drivers

- *Berwick* – CA Labor Comm. says employee
  - U.S. District Court certifies class action
  - Other states side with Uber
  - Tried to settle \$100 million in CA & MA
- Lyft tries to settle with drivers
  - U.S. District Court says “not enough”
  - Settled for \$27 million
- Car service or “online app”?



# Online Rentals





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# Online Rentals – By the Code

6

- §280A Vacation Rentals
- §469 Passive Activities





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# Vacation Homes





# Vacation Home Disallowance

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





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# 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:  
$$\frac{\text{\# days rented at fair market}}{\text{total \# days used for any purpose}}$$
- Or, see *Bolton v. Comm.* 77 TC 104



# Deduction Ordering

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



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# Passive Loss Rules





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# §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

# §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



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# What Activities Are Passive?

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





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# Rent a Room in Your House

- Traditional: long term tenant
- Mixed use property – allocate
- Report on Schedule E rental portion only





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# 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?



- 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)



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- 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



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- What about occupancy 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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