

## Table of Contents

<b>Introduction .....</b>	<b>1</b>
The Tax Reform Act of 1986.....	1
Enter the passive loss rules .....	1
The passive loss rules — overview.....	2
What is a passive activity? .....	2
How is the passive loss determined?.....	2
Alternative minimum tax.....	3
Discharge of indebtedness .....	3
Treatment of passive activities under Affordable Care Act.....	3
Treatment of suspended losses .....	3
Treatment of suspended losses in subsequent years.....	4
Treatment of former passive activities .....	5
Grouping activities.....	6
Grouping: the facts and circumstances test .....	6
Grouping: the consistency requirement.....	7
Fresh start for grouping under ACA .....	7
Limitations on grouping activities.....	7
Revised passive activity loss rules require information on groupings.....	8
Passive losses from passthrough entities.....	8
Net investment income tax for income from passthrough entities .....	9
Sale or exchange of interest.....	9
California .....	9
California nonresidents and part-year residents .....	10
<b>Rental real estate .....</b>	<b>11</b>
Exceptions to the rental rule .....	11
Seven-days-or-less rule.....	11
30-days-or-less rule .....	11
Extraordinary services provided.....	12
Rental of property incidental to a nonrental activity .....	13
Nonexclusive customer use .....	14
Property made available for use in a nonrental activity of a passthrough entity .....	14
Exceptions to the general rule for purposes of the net investment income tax.....	14
Deduction for active participation.....	14
Active participation .....	14
AGI phaseout .....	15
Married filing separate .....	16
Offset for estates .....	16
Passive activity credits.....	17

Suspended losses after offset allowance .....	17
The heavy effect of the offset and its phaseout .....	17
Self-dealing .....	18
Recharacterization.....	18
Self-charged expenses – generally .....	21
Self-charged interest – generally .....	21
<b>Real estate professionals .....</b>	<b>22</b>
Real estate personal services.....	23
Failed to qualify as real estate professional.....	23
What are personal services?.....	24
"On-call" time doesn't count .....	24
Passed 750-hour test – Failed more-than-half test .....	25
Short-term rental hours don't count.....	25
Time spent on investing activities doesn't count.....	25
Spouse's participation doesn't count.....	26
A taxpayer wins even though he only owned one rental property .....	26
What are real estate trades or businesses?.....	27
Material participation.....	28
Participation defined .....	28
Tests for material participation .....	29
Some work doesn't count.....	30
Real estate professionals.....	31
Material participation by other entities.....	32
Aggregating rental real estate activities (the single activity election) .....	34
Qualified as real estate pro, but failed aggregation election.....	35
The single activity election.....	35
Making the election.....	37
Revoking an election.....	38
California .....	39
Carryover losses of real estate professionals.....	39
Proving real estate professional status.....	39
Real Estate Professional Flowchart .....	41
<b>Dispositions of passive activities .....</b>	<b>42</b>
Dispositions for purposes of the net investment income tax .....	42
Dispositions of entire interests .....	43
Gains on sales of homes never rented are passive.....	43
Fully taxable transactions .....	43
Installment sales .....	44
Related party transactions.....	44
Transfers at death.....	45

Transfers by gift.....	45
Transfers incident to divorce .....	46
Distribution by an estate or trust .....	46
Casualties.....	46
Disposition of interests in passthrough entities.....	46
COD on passive activity is complete disposition of activity.....	46
Foreclosure not complete disposition when there are outstanding claims.....	48
Intersection of IRC §§121 and 469 – excluded gain doesn't offset suspended passive losses	48
Suspended credits .....	48
California .....	49
<b>Appendix: Summary of the participation tests .....</b>	<b>50</b>