

Material Participation Rules for Trusts: Leveraging Aragona Trust to Minimize NIIT

THURSDAY, NOVEMBER 9, 2017, 1:00-2:50 pm Eastern

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Material Participation Rules for Trusts

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Material Participation – Non Grantor Trusts and Estates

November 9, 2017

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Introduction

- The passive activity loss (“PAL”) rules provide that trusts may not use losses from passive activities to offset nonpassive income prior to the complete disposition of the activity.
- A passive activity is
 - a trade or business activity in which the taxpayer does not materially participate or
 - a rental activity (subject to an exception for real estate professionals)
- The PAL rules do not address material participation standards for trusts. To date only a handful of cases have addressed the issue.
- The issue has assumed greater urgency since the enactment of the 3.8% net investment income tax (“NIIT”) under IRC §1411 applies to trusts that have income from a passive activity above a certain threshold.
 - Trusts that previously may not have needed to determine whether they materially participated in an activity because they did not have losses are now required to make the determination.
- The IRS 2017-2018 Guidance Plan does not currently include guidance on material participation by trusts and estates.

What is a “Passive Activity?”

- Trade or business in which the taxpayer does not “materially participate.”
 - Trade or business activity is defined as an activity that:
 - Involves the conduct of trade or business (within the meaning of IRC § 162);
 - Is conducted in anticipation of starting a trade or business; or,
 - Involves research & development expenditures that would be deductible under IRC § 174.
- Rental activities.
 - Except certain rental activities of qualifying real estate professional.

If a taxpayer does not materially participate in an activity, the losses from the activity are limited by IRC § 469.

What is NOT a “Passive Activity?”

- Working interests in oil and gas wells held directly or indirectly
 - IRC §469(c)(3) & (4)
 - Taxpayer must have unlimited liability (e.g., no ownership through limited partnership or S Corporation)
- The rental of a dwelling unit used as a residence if IRC §280A(c)(5) applies.
 - IRC §280(c)(5) applies if the # of days the TP uses the dwelling unit as a residence exceeds the greater of 14 days or 10% of the # of days during the year that the home was rented at fair rental value.
- Activity of trading personal property
 - §1.469-1(e)(6)
 - Includes traders of stocks and bonds.
- Portfolio income and related deductions
 - 1.469-2T(c)(3) & 1.469-2T(d)

Grouping Activities

- If related activities form an appropriate economic unit, they may be grouped as a single activity, **making it easier to meet the material participation tests**. See Reg. § 1.469-4(c)(1).
- The following may not be grouped per Reg. §1.469-4(d):
 - A rental activity may not be grouped with a trade or business activity.
Exception: The activities may be grouped if they are owned in the same percentage or one is insubstantial to the other.
 - Real property rentals may not be grouped with personal property rentals.
 - Limited partners or limited entrepreneurs involved in activities specified in §465(c)(1) may group with another activity only if it is in the same line of business.
 - Limited entrepreneur – person other than a limited partner who does not actively participate in the management of the enterprise.

Regrouping Elections Pursuant to NIIT “Fresh Start” Regulations

- The final Regulations allow a taxpayer to regroup under §1.469-11(b)(3)(iv) on an amended return, but *only if the taxpayer was not subject to IRC Section 1411 on his or her original return.*
- Similarly, if a taxpayer regroups on an original return (or previously amended return), and then *subsequently determines that the taxpayer is not subject to IRC Section 1411* in that year, such *regrouping is void* in that year and all subsequent years until a valid regrouping is done.

Determining Material Participation

- **General Rule:** A taxpayer materially participates in an activity if he or she works on a regular, continuous and substantial basis in operations.
- Material participation is a year-by-year determination.
- Participation must not consist of: Work not customarily performed by an owner, or participation in the capacity of an investor.

Seven Material Participation Tests in Treas. Reg. § 1.469-5T(a)

Quantitative Tests

1. The TP works 500 hours or more during the year in the activity.
 - If the TP qualifies, this is the strongest defense to a passive activity reclassification.
2. The TP does substantially all the work in activity.
 - No specific hour test and “substantially all” not defined.
3. The TP works more than 100 hours in the activity during the year **and** no one else works more than the TP.
4. The activity is a significant participation activity (“SPA”), and the sum of SPAs in which the TP works 100-500 hours exceeds 500 hours for the year.

Seven Material Participation Tests in Treas. Reg. § 1.469-5T(a) (Continued)

Prior Year MP Tests

5. The TP materially participated in the activity in any 5 of the prior 10 years.

Example: TP retired and his children now run business, but he stills owns an interest in the partnership.

6. The activity is a personal service activity and the TP materially participated in that activity in any 3 prior years.

Facts and Circumstances Test

7. Based on all the facts and circumstances, the TP participates in the activity on a regular, continuous, and substantial basis during such year.

Rules for Limited Partners (Continued)

- After a series of court losses, IRS issued Prop. Reg. § 1.469-5(e)(3) regarding treating LLC and LLP interests as limited partner interests. The proposed regulations focus on the following:
 - Whether the entity is taxed as a partnership for FIT purposes **and**
 - Whether the individual has the right to manage the entity under state law and the entity agreement.
 - **But**, the limited partnership limitation is not applicable if the individual also holds another interest in the entity that is not akin to a limited partnership interest as defined by the proposed regulations.

Rules for Limited Partners (Continued)

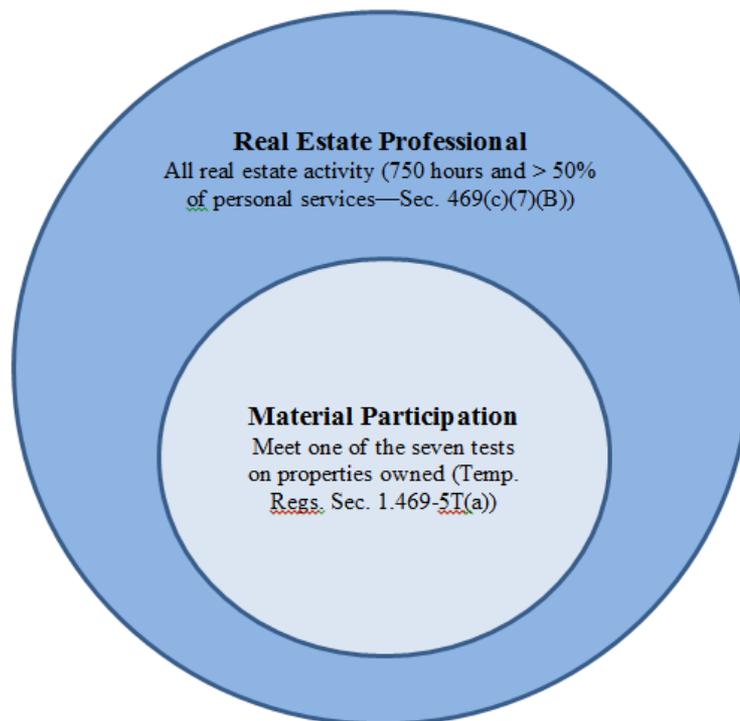
- The IRS 2017-2018 Guidance Plan indicates that the IRS plans to issue final regulations under §469(h)(2) concerning limited partners and material participation.
- The IRS's previous guidance regarding the treatment of LLC members under the material participation rules has been that an LLC member can be a material participant only by meeting the limited partner 500 hour safe harbor test, historical participation test, or personal service activity test.
- Any activities grouped with a limited partnership interest will likely be viewed as a limited partnership activity by the IRS.

Real Estate Professional Exception

- Although rental activities are *per se* passive activities, they may nonetheless avoid passive classification if the taxpayer:
 - Qualifies as a “real estate professional” AND
 - Materially participates in each rental activity.
- Under IRC §469(a)(c)(7)(B), a taxpayer is a real estate professional if **two tests** are satisfied:
 - More than one-half of the personal services the taxpayer performs in trades or businesses during the tax year are performed in real property trades or businesses in which the taxpayer materially participates, **and**
 - The taxpayer performs more than 750 hours of services during the tax year in real property trades or business in which the taxpayer materially participates.

Real Estate Professional Exception

Two-Part Test for Real Estate Professional



Real Estate Professional Exception

- Real property trades or businesses are defined as:
 - Any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing or brokerage trade or business. IRC §469(c)(7)(C).
- » Definition of “personal services”:
 - » Any work performed by an **individual** in connection with a trade or business (as defined for IRC §469(c)(7) purposes to include IRC §212 activities).
 - » Does not include:
 - Any work performed by an individual in the individual’s capacity as an **investor**.
 - Personal services performed as an **employee** do not count as performed in real property trades or businesses unless the employee is **5% owner** of the employer.

Practice Tip: On a joint return if either spouse **individually** satisfies both parts of the the two-part test then all rental real estate activities of both spouses qualify for the exception. But the spousal attribution rules can still be used to prove material participation.

Real Estate Professional Exception

- Material participation must be satisfied with regard to each separate interest in rental real estate **unless** the taxpayer has made an election to treat all interests in rental real estate as a single rental activity.
 - Aggregation election must be affirmatively made by filing a statement with the taxpayer's **original tax return** containing a declaration that the taxpayer is a qualifying taxpayer and is making the election under IRC §469(c)(7)(A).
 - » If the election is made, the 750 hours of material participation may be satisfied by looking at **all** of the rental properties in aggregate.

Practice Tip: The IRS may accept a late aggregation election pursuant to Rev. Proc. 2011-34 if returns have been filed timely, filed consistent with the proposed aggregation and the failure to timely file the election is due to reasonable cause.

Material Participation of Trusts

- There is no statute or regulation addressing how a trust satisfies material participation tests.
- There is one excerpt from the legislative history that states that a trust “is treated as materially participating in an activity. . . If an executor or fiduciary, **in his capacity as such**, is so participating.” S. Rept. No 99-313, at 735 (1986). (Emphasis Added).

Passive Activity and IRC §1411

- Pursuant to Section 1411 a 3.8% tax is imposed on net investment income (“NII”) from a passive business activity.
- To define a passive business activity that produces NII, Section 1411 cross-references the rules of Section 469.
 - As a result, the rules of Section 469 assume great importance in the context of the NIIT.
- The preamble provides a list of Section 469 rules applicable to Section 1411 (this list is not exhaustive):
 - Material participation;
 - Grouping rules;
 - Rental Activity exceptions; and
 - Real Estate Professional exception.

Who is Subject to the NIIT Under IRC §1411

- Individuals, defined to include:
 - Citizens and residents of the United States;
 - Bona Fide Residents of United States Territories; and
 - Bankruptcy estates.
- Trusts and estates. Generally all estates and trusts subject to tax under Subchapter J of the Internal Revenue Code are subject to the NIIT. Trusts that are excluded from the NIIT include: (1) charitable trusts; (2) trusts exempt from tax under IRC section 501; (3) grantor trusts (but persons who are treated as owners may be subject to NIIT) ; and (4) certain other trusts statutorily exempt from taxation.

What Income is Included in NII Under IRC §1411?

- Net investment income includes gross income from:
 - Interest, dividends, annuities, rents and royalties other than such income derived in the ordinary course of an “active” trade or business;
 - Other income and gains from “**passive**” **activities**;
 - Other income and gains from businesses involved in the trading of financial instruments and commodities;
 - Net taxable gains from the sale of property that was not used in a trade or business (there are special rules for dispositions of partnership or S corporation interests).

What Income is Excluded from NII Under IRC §1411?

In addition to excluding from NII any investment income that is exempted from the regular income tax (e.g., tax exempt bond income), other exceptions from NII include:

- Income from “active” interests in partnerships and S Corporations.
 - Thus important to determine whether such income is active or passive.
- Distributions from qualified plans, including: (1) qualified pension, profit sharing and stock bonus plans; (2) qualified annuity plans; (3) plans for employees of public schools and tax exempt organizations; (4) traditional IRAs; (5) Roth IRAs; and (6) deferred state and local government and tax exempt organizations' compensation plans; and
- Any amount taken into account in determining “self-employment” income, which is subject to the 0.9% high income (“HI”) tax under IRC §1401(b).

IRC 1411 Thresholds (Individual Taxpayers)

Individual taxpayers with net investment income and whose “modified adjusted gross income” (MAGI) exceeds a certain static (i.e., non-inflation adjusted) threshold, specifically \$200,000 (\$250,000 for married taxpayers filing jointly).

For individuals, MAGI is the taxpayer’s “adjusted gross income” (AGI) increased by certain foreign earned income. For most individuals, MAGI will equal AGI.

Section 1411 Thresholds (Estates and Trusts)

- The amount subject to the 3.8% tax for each tax year is the lesser of either:
 - Undistributed Net Investment Income (UNII); or
 - The excess of the trust or estate's AGI over the dollar amount at which the estate or trust's highest tax bracket begins. This tax bracket is indexed for inflation. The threshold amount is \$12,400 for 2016.
- UNII is essentially NII that the trust or estate has not distributed during the tax year.

Material Participation of Trusts – Carter Trust Case

- Until recently, the only court opinion suggested that the **collective efforts** of the trust's fiduciaries, employees, and agents should be used to determine if the trust's participation is regular, continuous and substantial. See *Mattie K. Carter Trust*, 256 F. Supp. 2d 536 (N.D. Tex. 2003)
 - **Background:**
 - The Mattie K. Carter Trust operated a cattle ranch activity directly.
 - Trustee hired a ranch manager to run the day-to-day operations of the ranch.
 - The trustee was involved in the financial operations of the ranch as well as oversight and approval of the ranch manager's decisions.
 - IRS argued that
 - Only the participation of the trustee, in his capacity as fiduciary, should be considered to determine if the trust satisfied the material participation test; and
 - Because the trustee did not materially participate, the trust did not satisfy the MP test.
 - In reaching its decision, the court noted that looking only to the trustee for MP "finds no support within the plain meaning of the statute."
 - Court also noted that it reviewed the "snippet of legislative history" but did not find it persuasive as the court need not resort to legislative history where the statutory language is clear.
 - The court, however, also held in the alternative that the actions of the trustee alone satisfied the material participation test.

Material Participation of Trusts – Carter Trust Case (Continued)

- Are the court's statements regarding looking to the trustee alone dicta?
- To what extent does *Mattie Carter* turn on the fact that the trust operated the ranch directly rather than through an entity?

Material Participation of Trusts – IRS Position

- After the *Carter Trust* case, the IRS issued administrative guidance on the issue of material participation of trusts:
 - **TAM 200733023**
 - IRS concluded that notwithstanding the *Carter Trust* decision, the sole means for a trust to establish material participation is by its fiduciaries being involved in the operations.
 - IRS relied on the legislative history “snippet” to support the ruling.
 - The TAM also concluded that special trustees were not fiduciaries for purposes of IRC §469 because they gave recommendations but were not able to commit the trust to any course of action or control trust property without the trustees’ express consent.
 - IRS reasoned that if advisors, consultants, employees, etc. could be considered fiduciaries just by labeling them as such the IRC §469 material participation requirement would be meaningless.

Material Participation of Trusts – IRS Position

- **PLR 201029014**

- Ruling considered whether a trust could materially participate in the business of a subsidiary (Sub B) of a subsidiary (Sub A) owned by a partnership in which the trust owned an interest.
- IRS reiterated its general position that a trust materially participates in an activity only if the trustee is involved in the operations of the entity's activities and satisfies a material participation test through such involvement.
- **Ruling:** IRS agreed with the TP that the trustee could materially participate in Sub B if the trustee participated in the operations of Sub B's activities on a "regular, continuous and substantial basis."

Material Participation of Trusts – IRS Position

- **TAM 201317010**

- Trust with trustee and special trustee owned stock in S corp. The Trustee did not participate in day-to-day activities of the S corp. However, the special trustee was also the president of the subsidiary of the S corp.
- Trust instrument limited the special trustee's authority to selling or voting the S corp stock.
- **Conclusion:**
 - IRS concluded that the trust did not materially participate because the special trustee's authority was limited, thus, only the time spent voting company stock or considering sale of stock would count towards the trust's material participation.
 - IRS further concluded that the special trustee's participation as president was as an employee rather than in his role as a fiduciary and, therefore, did not count towards the trust's material participation.

Material Participation of Trusts – Tax Court Weighs in

- In 2014, the Tax Court issued its long-awaited ruling in Frank Aragona Trust v. Commissioner, 142 T.C. No. 9 (2014).
 - **Facts:**
 - Frank Aragona Trust owned real estate rental properties and also owned interests in wholly owned entities and majority interests in other entities that conducted rental real estate activities.
 - The trust was the sole owner of an LLC that managed the real estate properties.
 - The trust's beneficiaries were the grantor's 5 children.
 - There were 6 co-trustees—the grantor's 5 children and 1 independent trustee. A child served as “executive trustee” and “the trustees formally delegated their powers to the executive trustee (in order to facilitate daily business operations),” but “the trustees acted as a management board for the trust and made all major decisions regarding the trust's property.”
 - 3 of the 5 children were full-time employees of an LLC that operated the properties.
 - The LLC employed other people in addition to the three children (controller, leasing agents, maintenance workers, etc.).
 - 5 children were paid \$72,000 per year as trustees and independent trustee was paid \$14,400 per year.
 - Issue was whether losses claimed by the trust from rental operations in 2005 and 2006 which contributed to its NOLs in 2005 and 2006 were passive.

Material Participation of Trusts – Aragona Trust Case

- IRS position:
 - A trust can never meet the real estate professional exception because the regulations describe “personal services” as used in the two real estate professional exception tests as “any work performed by an *individual* in connection with a trade or business.” Reg. 1.469-9(b)(4). Because a trust is not an individual, IRS argued that it cannot meet this requirement.
 - The activities of the 3 co-trustees as full-time employees of the LLC should not be considered because (1) they performed their activities as employees, and (2) it is impossible to disaggregate the activities they performed as employees from activities performed as trustees. **{Note: this is consistent with the IRS position in TAM 201317010}**
 - IRS argued that because some trustees owned minority interests in some of the real estate activities that a part of their participation was related to their personal portions of the businesses.

Material Participation of Trusts – Aragona Trust Case

◦ Tax Court Holding:

- If trustees are individuals, their work can be considered “work performed by an individual” so that a trust can qualify for the real estate professional exception under IRC §469(c)(7).
- The 3 trustees’ participation as employees of a trust-owned LLC should be counted for material participation purposes.
- Trustees’ participation counted even where the trustees also owned a minority interest in some of the trust’s real estate assets.
 - *It is unclear if the court would rule the same way if the trustee owned a majority interest in an asset also owned by the trust.*
- Court reasoned that under Michigan law, a trustee is required to act prudently with respect to the trust assets at all times **{Note: most states follow the same or similar requirement}**. As such, the trustees could never take off their “fiduciary hat.”
- Court found no need to determine whether the activities of the trust’s non-trustee employees should be considered for MP purposes. **{Note: Carter Trust case still only judicial precedent on this issue}**

Remaining Questions and Issues

Fiduciary Considerations

- Whose participation is relevant in determining whether a non-grantor trust or estate materially participates in a trade or business or real estate activity?
 - Undistributed trust income. Material participation should be determined based on the activity of the fiduciary trustee(s).
 - The trustee must have and exercise “fiduciary” powers.

Remaining Questions and Issues

Fiduciary Considerations

- Whose participation is relevant in determining whether a non-grantor trust or estate materially participates in a trade or business or real estate activity?
 - Distributed Trust Income.
 - There is an argument that the beneficiary's activities should be considered with regard to distributed trust income.
 - NYSBA: Once the character of the income is determined at the trust level, such characterization carries over to the beneficiaries, even if the beneficiaries level of participation is different than the trust's. *NYSBA Tax Section Comments on Standards for Material Participation of Trusts, Estates Under Sections 469, 1411* (August 17, 2015).
 - ABA and American College of Trust and Estate Counsel ("ACTEC"): Reclassify income at the beneficiary level. ACTEC would not recharacterize nonpassive income at the trust level as passive at the beneficiary level (to avoid passive loss utilization issues). *ABA Tax Section Comments on Final Rules (T.D. 9644) on Net Investment Income Tax* (January 15, 2015); *American College of Trust and Estate Counsel Comments on Proposed Rules (REG-130507-11) on Net Investment Income Tax Under Section 1411* (Sept. 24, 2015).

Remaining Questions and Issues

Fiduciary Considerations

- Which trustees are considered for determination of material participation?
 - Only trustees with fiduciary powers.
 - Power to make decisions with respect to the trust or estate's trade or business and the trustees have a fiduciary relationship to the beneficiaries.
 - Must have a fiduciary relationship to the beneficiaries under state law.
 - The title "trustee" is not determinative.
 - Trustees with limited powers (i.e., "special trustees," such as a trustee that manages the trust's non business assets) are not considered.
 - How closely do you need to examine state law?

Remaining Questions and Issues

Fiduciary Considerations

- What if there are multiple trustees?
 - Activities of fiduciary trustees should be aggregated. It is irrelevant whether trustees must act as a board (i.e., consent of majority of trustees required for an action) or have powers similar to a general partner or manager (can bind trust without consent of the other trustees).
 - What about the activities of other fiduciaries? If a trust protector is involved, might the trust protector's activities be considered if sufficiently broad?

Remaining Questions and Issues

Fiduciary Considerations

- What if a trustee is also an employee (or shareholder/ officer/ director) of the business operation held by the estate or trust?
 - The trustee must meet the requisite fiduciary requirements.
 - For fiduciary trustees, aggregate activities performed in different capacities should count.
 - Includes activities of employees hired by trustees.
 - Agency principles should apply.
 - Nature of activities may still be relevant with respect to personal services for the “real estate professional” exemption.
 - What about trust employees?

Remaining Questions and Issues

Fiduciary Considerations

- What if a trustee is a corporate trustee?
 - ABA and ACTEC: Activities of a corporate trustee or trust company can satisfy material participation.
 - NYSBA: Material participation can not be achieved through the activities of corporate trustees, except for private trust companies.
 - Can a corporate trustee qualify for the “real estate professional” exception?

Remaining Questions and Issues

Fiduciary Considerations

- What if multiple trusts and estates own an interest in a business?
 - If more than one trust or estate owns an interest in a business and they have at least one fiduciary in common, it was recommended that all of that person's work in the business counts for each trust or estate in full. There is no allocation of hours among the different trusts or estate.

Remaining Questions and Issues

Fiduciary Considerations

- Can a trust meet the real estate professional exception?
 - The IRS position has been that only individuals can meet the real estate professional exception.
 - There is general agreement in various comments and recommendations that an estate or trust can meet the real estate professional exception.
 - The comments follow the court's rationale in Aragona that the real estate professional test is not restricted to individuals.

Discussion

- What is the law now?
- On December 2, 2013, the Department of the Treasury requested comments with respect to guidance as to material participation of estates and trusts to be issued under Treas. Reg. Section 1.469-5T(g).
- What if the IRS sticks to its position that only the activities of the trustee in its capacity as such are relevant?
- What should the law be?
- What should taxpayer be doing to protect themselves on audit?

Remaining Questions and Issues

- What if the IRS issues regulations that reflect its position in *Carter and Aragona*, strictly limiting material participation by viewing only the fiduciary's activities in his or her capacity as such?
 - Section 469(l) gives the IRS broad regulatory authority (i.e., legislative authority).
 - Courts analyzing the validity of Treasury regulations apply Chevron levels of deference. See *Chevron U.S.A., Inc. v. Natural Resources Defense Counsel, Inc.*, 467 U.S. 837 (1984); *Loving v. IRS*, 742 F.3d 1013 (CA Dist. Col 2014).
 - Chevron Step I: If the intent of Congress is clear, that is the end of the matter. The court as well as the IRS must give effect to unambiguously expressed intent of Congress. See *Loving*, supra.
 - Chevron Step II: If the statute is silent or ambiguous with respect to the specific issue, the court must ask whether the IRS's interpretation is a "permissible construction of the statute." The IRS construction of the statute will be upheld unless it is "arbitrary or capricious in substance or manifestly contrary to the statute. *Loving*; *Mayo Found. for Med. Educ. & Research v. U.S.*, 13 S. Ct. 704 (2011).
 - Holding in *Mattie Carter* that the statute is unambiguous on its face may be of critical importance here.
 - Need to file disclosure on Form 8672-R?

Remaining questions and Issues

- Due to the threshold differences between estates and trusts and individual taxpayers, an initial consideration is whether it is beneficial for the trust to distribute its income to individual beneficiaries rather than accumulating income in the trust (i.e., can the NIIT be avoided by distributions from a trust or estate to the individual beneficiaries due to the higher individual thresholds?).
- Determination of passive versus active income for the trust or estate and beneficiaries has been an area of uncertainty awaiting further guidance from the IRS. The application of the material participation rules play a crucial role in the application of the NIIT.

Remaining Questions and Issues

- What if there is gain or loss on conversion of a grantor trust to a non-grantor trust– how is character determined?
 - The recommendations and comments agree that any gain or loss realized and recognized on a conversion from a grantor to a non-grantor trust is characterized based on the material participation of the grantor or owner immediately prior to the conversion.

Remaining Questions and Issues

- How is the character of gain or loss by a QSST determined upon the sale of S corporation stock?
 - The recommendations provide that the material participation of the beneficiary of the QSST determines whether the gain or loss is passive or non-passive.

Audit Tips for Proving Material Participation

- Be prepared to address the following items the IRS considers as indicators that the taxpayer **did not** materially participate in the activity:
 - The taxpayer was not compensated for services.
 - The taxpayer's residence is hundreds of miles from the activity.
 - The taxpayer has a W-2 wage job requiring 40+ hours per week for which he receives significant compensation.
 - There is paid on-site management (e.g., foreman, supervisor and/or employees) who provide day-to-day oversight and care of the operations.
 - The taxpayer has numerous other investments, rentals, business activities, or hobbies that absorb significant amounts of time.
 - The taxpayer is elderly or has health issues.
 - Business operations would continue uninterrupted if the taxpayer did not perform the services claimed.

Audit Tips for Proving Material Participation

- Spend time compiling evidence that supports the taxpayer's claim of time spent working in the activity. Evidence may include:
 - Receipts, notes, cell phone records, etc.;
 - Recreated logs;
 - Narratives;
 - Witness testimony.
 - *A knowledgeable taxpayer is a valuable asset in a passive activity audit.*
- Maintain documents/records and analysis that supports groupings.
- Also, consider whether to proceed to appeals through tax court to lessen the likelihood of referral back to examiner.

Audit Tips for Reducing NIIT Liability

- Examine passive investment holdings
 - Determine if it is worthwhile for your clients to become a material participant in any of their passive activities;
 - *Carefully consider SE tax implications.*
 - Consider regrouping your clients' activities under the "fresh start" Regulations.