

REAL ESTATE



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Q I am leasing real property to my corporation. Are there any adverse tax consequences?

A It depends on whether or not you materially participate in the corporation's business. Section 469 (c) (2)'s general rule characterizes all rental activity as passive. However, there is an exception under Regulation Sec. 1.469-2 (f) (6), (sometimes referred to as the self rental re-characterization rule). It provides that net rental income is not passive activity income if the property is rented for use in a business in which the taxpayer materially participates. This rule re-characterizes net rental income as income from an active trade or business if it produces net income. Net losses are still treated as passive. This results in the " worst of both worlds ".

The purpose of this rule is to prevent business owners from being able to create passive income to offset passive losses by renting property to a controlled entity.