

# The Active vs. Passive Question

## Will you be NIIed?



Presented By  
Michael D. Koppel, CPA, MBA, PFS, CITP



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# Today's Presenter



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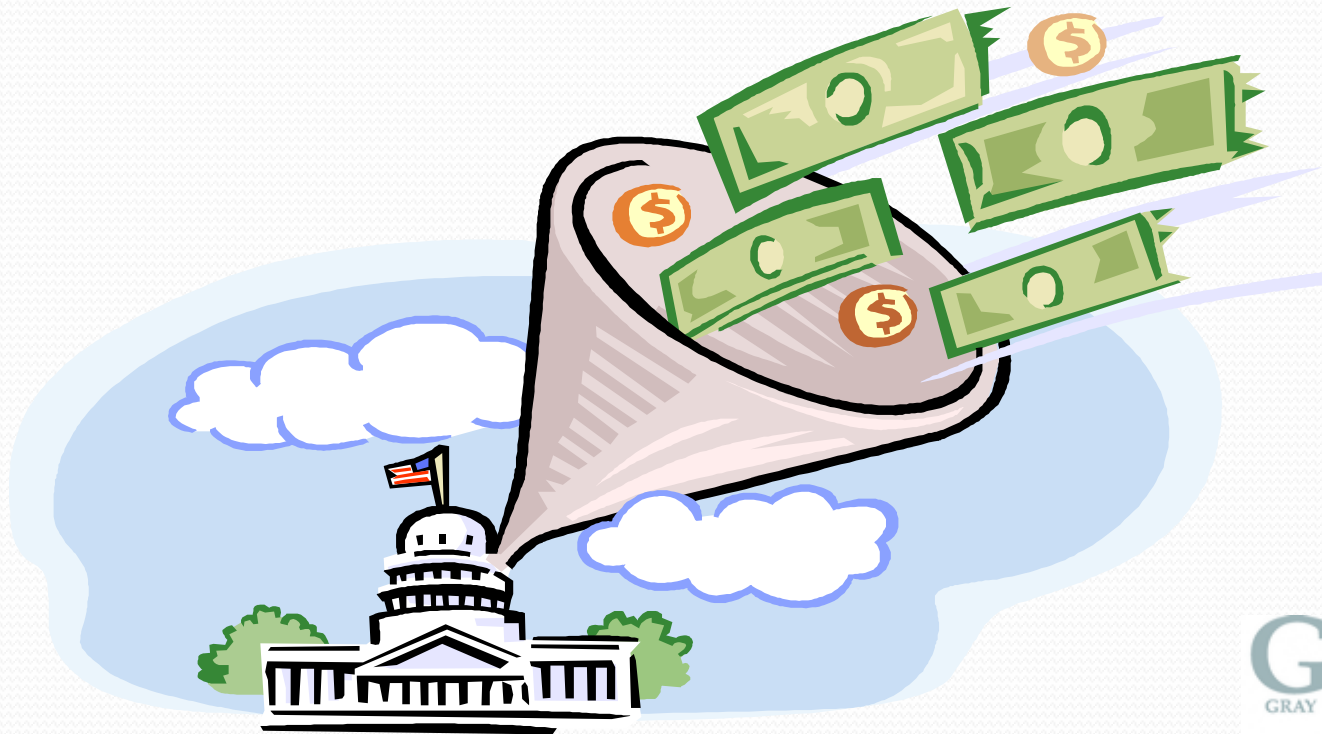
**Don't let the tax tail  
wag the economic dog!**



# WHY IS THIS SO IMPORTANT NOW?

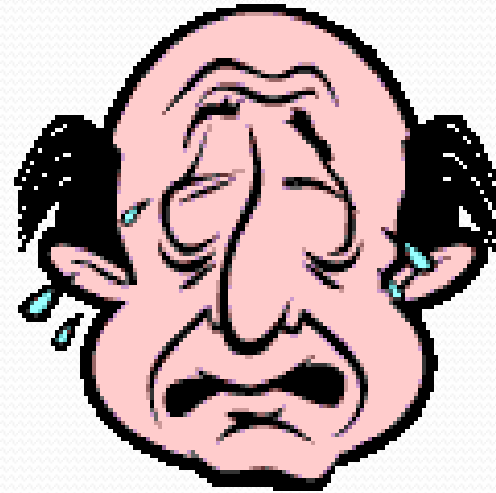


# LESSER OF INVESTMENT INCOME OR AMOUNT IN EXCESS OF “HIGH INCOME”



# 3.8%

- INTEREST
- DIVIDENDS
- RENTS
- ROYALTIES
- ANNUITIES



# GAIN ON SALE

NET GAIN FROM SALE OF PROPERTY  
*OTHER THAN PROPERTY HELD IN  
TRADE OR BUSINESS THAT IS NOT  
PASSIVE*



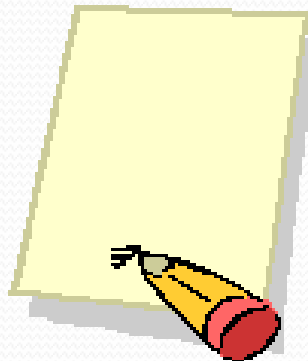
# S CORPORATION





# PARTNERSHIPS

- SPOUSES TREATED THE SAME
- IMPORTANCE OF CLASSIFICATION  
ON 1065
- BIFURCATION
- GUARANTEED PAYMENT
- REAL ESTATE PROFESSIONAL



# ACTIVE vs. PASSIVE



# WORKS ON A REGULAR, CONTINUOUS AND SUBSTANTIAL BASIS IN OPERATIONS



**THE TAXPAYER WORKS 500  
HOURS OR MORE DURING  
THE YEAR IN THE ACTIVITY.**



**THE TAXPAYER DOES  
SUBSTANTIALLY ALL THE  
WORK IN THE ACTIVITY.**



**THE TAXPAYER WORKS MORE  
THAN 100 HOURS IN THE  
ACTIVITY DURING THE YEAR  
AND NO ONE ELSE WORKS  
MORE THAN THE TAXPAYER.**



**THE ACTIVITY IS A SIGNIFICANT PARTICIPATION ACTIVITY (SPA), AND THE SUM OF SPAS IN WHICH THE TAXPAYER WORKS 100-500 HOURS EXCEEDS 500 HOURS FOR THE YEAR.**



**A SIGNIFICANT PARTICIPATION  
PASSIVE ACTIVITY IS ANY TRADE  
OR BUSINESS ACTIVITY IN  
WHICH YOU PARTICIPATED FOR  
MORE THAN 100 HOURS DURING  
THE TAX YEAR BUT DID NOT  
*MATERIALLY PARTICIPATE.***



**THE TAXPAYER MATERIALLY  
PARTICIPATED IN THE  
ACTIVITY IN ANY 5 OF THE  
PRIOR 10 YEARS.**



**THE ACTIVITY IS A PERSONAL  
SERVICE ACTIVITY AND THE  
TAXPAYER MATERIALLY  
PARTICIPATED IN THAT  
ACTIVITY IN ANY 3 PRIOR YEARS.**



**BASED ON ALL OF THE FACTS AND CIRCUMSTANCES, THE TAXPAYER PARTICIPATES IN THE ACTIVITY ON A REGULAR, CONTINUOUS, AND SUBSTANTIAL BASIS DURING SUCH YEAR. HOWEVER, THIS TEST ONLY APPLIES IF THE TAXPAYER WORKS AT LEAST 100 HOURS IN THE ACTIVITY, NO ONE ELSE WORKS MORE HOURS THAN THE TAXPAYER IN THE ACTIVITY, AND NO ONE ELSE RECEIVES COMPENSATION FOR MANAGING THE ACTIVITY.**



**TAXPAYERS MAY PROVE THEIR HOURS  
OF PARTICIPATION BY ANY  
REASONABLE MEANS, INCLUDING, BUT  
NOT LIMITED TO, APPOINTMENT  
BOOKS, CALENDARS, AND NARRATIVE  
SUMMARIES**

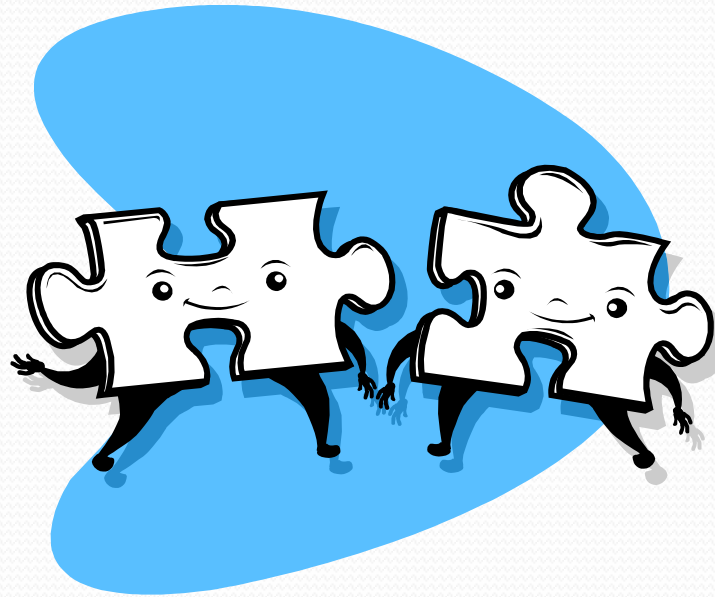


# **REAL ESTATE PROFESSIONAL**

- 1. OWNS AT LEAST ONE INTEREST IN RENTAL REAL ESTATE**
- 2. 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**
- 3. THE TAXPAYER PERFORMS MORE THAN 750 HOURS OF SERVICE DURING THE TAX YEAR IN REAL PROPERTY TRADES OR BUSINESSES IN WHICH THE TAXPAYER MATERIALLY PARTICIPATES**

# GROUPING ACTIVITIES

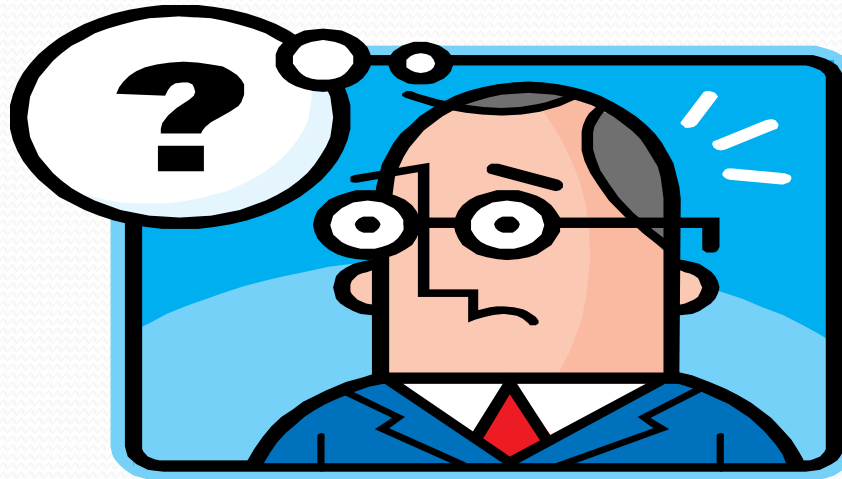
## REGROUP IN 2013





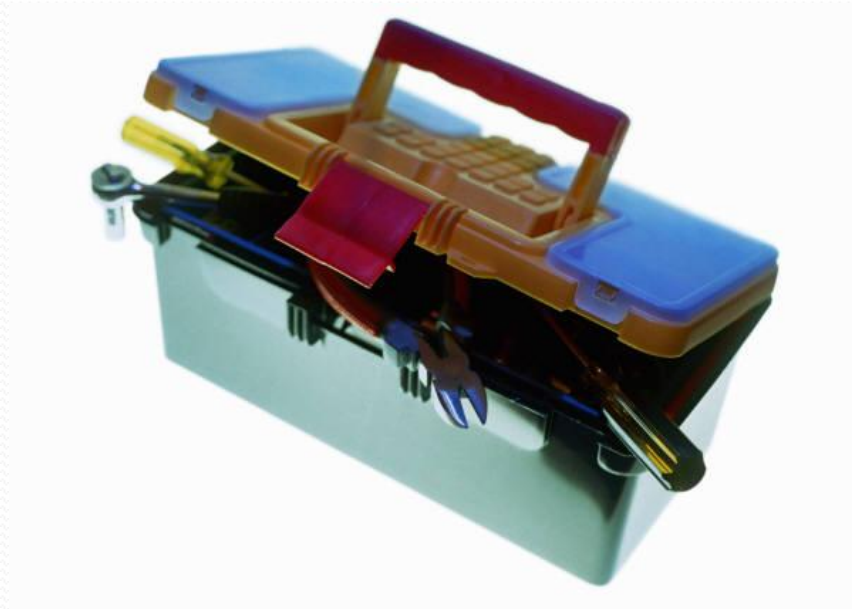
**UNLESS 1, 5 OR 6**

# MATERIAL PARTICIPATION VS. SELF-EMPLOYMENT TAX





# “REPAIR REGULATION”



# Questions



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# Contact Us



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