BASIS PROPERTY GROUP

COST SEGREGATION ADVISORY

TAX REFERENCE SHEET

The Short-Term Rental Tax Tests, On One Page

Five tests that determine how STR losses are treated and how a building depreciates. Mechanics only: a reference sheet, not a verdict on any specific return.

THE STR EXCEPTION

`Treas. Reg. 1.469-1T(e)(3)(ii)`

A rental property whose average guest stay is 7 days or less is not a “rental activity” under section 469. Average stay is a computed figure: total nights rented divided by the number of stays in the tax year, not a cancellation policy or a minimum-stay setting.

Falling outside the rental-activity definition does not by itself make a loss deductible. It removes the property from the passive rental bucket so material participation, the next test, can be evaluated.

MATERIAL PARTICIPATION

`Section 469`

Once a property clears the STR exception, the owner needs material participation for losses to be non-passive. Three tests come up most often for short-term rentals:

- 500 or more hours of participation during the year
- Substantially all of the participation in the activity, by anyone, is the owner’s
- 100 or more hours, and more than any other individual (a category that includes cleaners, co-hosts, and property managers)

A full-service property manager’s hours count against the owner in that comparison, which is why professional management often breaks the 100-hour test.

PERSONAL USE

`Section 280A`

Deductions are limited once personal use of the property exceeds the greater of 14 days or 10% of the days the property is rented at fair value during the year. Both figures are measured in days for the tax year.

BONUS DEPRECIATION

`Section 168(k)`

100% bonus depreciation is restored and made permanent for qualified property acquired after January 19, 2025, under the 2025 OBBBA law. Property acquired from 2023 through January 19, 2025 follows the prior phase-down schedule:

PROPERTY ACQUIRED	BONUS RATE
After Jan 19, 2025	100% (permanent)
2023	80%
2024	60%
Jan 1 – Jan 19, 2025	40%

A cost segregation study identifies which components of a building fall into the 5-year, 7-year, and 15-year categories eligible for bonus depreciation, separate from the 39-year (commercial) or 27.5-year (residential rental) structural shell, which is not eligible.

SETTLED LAW

`HCA v. Commissioner, 109 T.C. 21 (1997) · IRS Pub. 5653`

Depreciation reclassification through a cost segregation study has been settled law since the IRS lost Hospital Corporation of America v. Commissioner. The IRS publishes its own Audit Techniques Guide, Publication 5653, describing how a properly performed study is conducted and reviewed.