

## **Alt Min Refundable Credit New Slide**

- Double tax potential if no tax credit
  - Exp. ISO to buy 10,000 share for a price of \$2; market price \$100
  - When exercised
    - Purchase of shares for \$20,000 no regular tax
    - However, Alt min tax \$980,000 (\$1 m - \$20k)
  - When ISOs are sold – a second regular tax
  
- Minimum tax credit for timing differences (i.e., ISOs)

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## **Alt Min Refundable Credit New Slide**

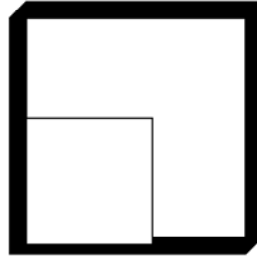
- Prior law – min. tax credit may not exceed the regular tax – min. tax.
- Why the Dot.com er's jumped of the bridges in 2000
  - Paid the AMT tax
  - Market crashed, never received any benefit
  - Regular tax seldom exceeded the alt min tax
  - So they did not use their min tax credit



# Four Corners of House Rule

## New Slide

25% of  
House



Depreciation

\$ 2,000

\$ 2,000

\$ 2,000

\$ 2,000

—

\$ 8,000

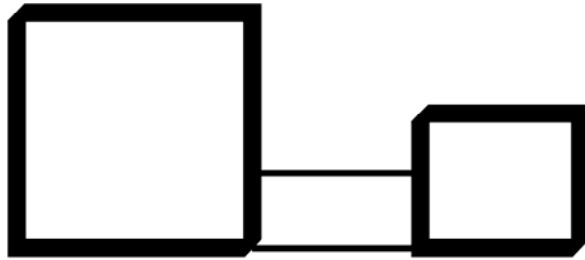
~~Sell for \$500,000~~

~~Cost 300,000~~

~~Gain of \$200,000~~

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# Four Corners of House Rule New Slide

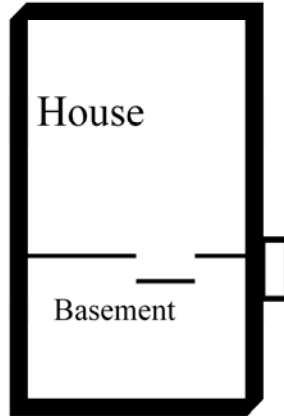


House

Garage



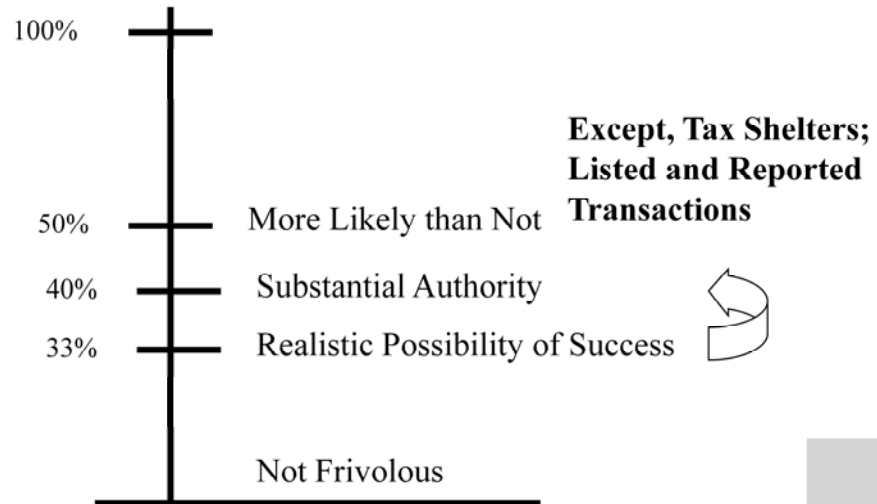
# Four Corners of House Rule New Slide



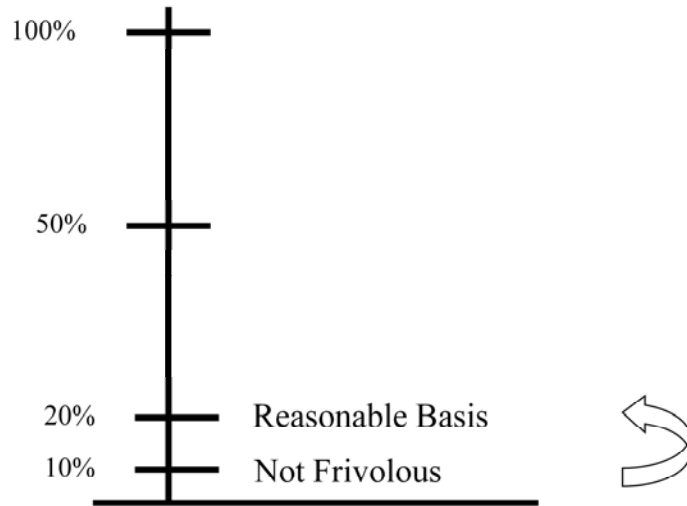
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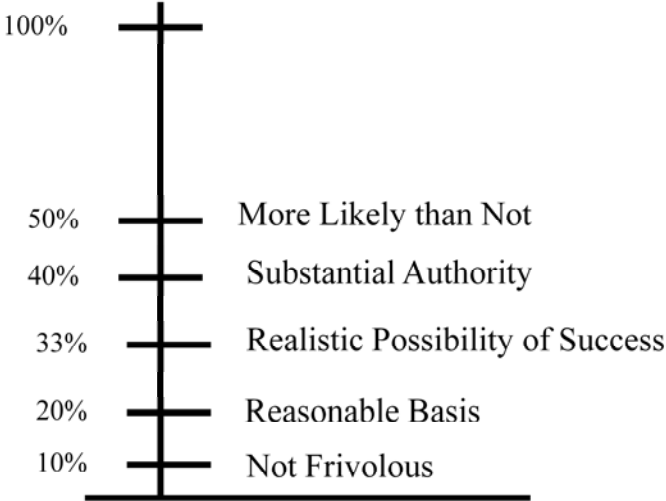
## Undisclosed Position New Slide



## Disclosed Position New Slide



# Standards New Slide





## **Investor v. Trader**

### **New Slide**

#### **A. Dealer**

1. Income ordinary
2. Expenses ordinary
3. Schedule C if sole proprietor

#### **B. Investor**

1. Income capital gain – Schedule D
2. Investment interest expense to the extent of investment income – Schedule A



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## **DISADVANTAGES**

### **I Short Term Asset Protection Planning Solution**

What happens if the client needs to access the assets of the family limited partnership? As soon as there is a distribution, it must be made to the creditor pursuant to the charging order. In this respect, a family limited partnership is a short-term asset protection planning tool. The question is always: Who can wait the longest? If the creditor can out-wait the client, this fact will force a settlement on much more favorable terms.

### **II. Judicial Foreclosure Sale of the Limited Partnership Interest**

A family limited partnership works as a fairly good asset protection planning solution when a charging order is the sole remedy that a creditor may receive. But what happens if state law allows others such as the judicial foreclosure sale of the limited partnership interest?

In this case, the debtor's limited partnership interest is sold to a third person, the debtor now has two persons that they must negotiate a settlement with: the original creditor and the purchaser of the limited partnership interest. The original creditor receives the proceeds from the judicial foreclosure sale to be applied to the original debt. However, now the debtor has two creditors whom he must negotiate a settlement with. First, the debtor is still liable to the original creditor to the extent the proceeds from the sale of the partnership interest did not satisfy the outstanding debt. Second, at some point in time, the debtor must also negotiate to purchase his sold partnership interest from the person who purchased the partnership interest.

## Investor v. Trader – New Slide

### A. Trader

1. No § 475(f) Election
  - a. Capital gain income – Schedule D
  - b. Business Interest expense – Schedule C
    - i. No investment interest limitation
2. § 475(f) election
  - a. Mark to Market
  - b. All income or loss ordinary – Form 4797
  - c. Schedule C Business interest expense
  - d. Must be made by due date of prior years return
    - i. 4/15/2008 for the year 2008
3. PLR to revoke the § 475(f) election



## DISADVANTAGES

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## **Installment Sale Rules**

### **New Slide**

- A. § 453(a) – Report Sale on Installment Method
- B. § 453(b) – If more than one payment received after close of taxable year
- C. May Elect Out**
  - 1. Reporting full gain in year of sale, automatically elects taxpayer out of installment sale Reg. § 15A.451-1(d)(3)
  - 2. Election must be made by due date + extensions



## **DISADVANTAGES**

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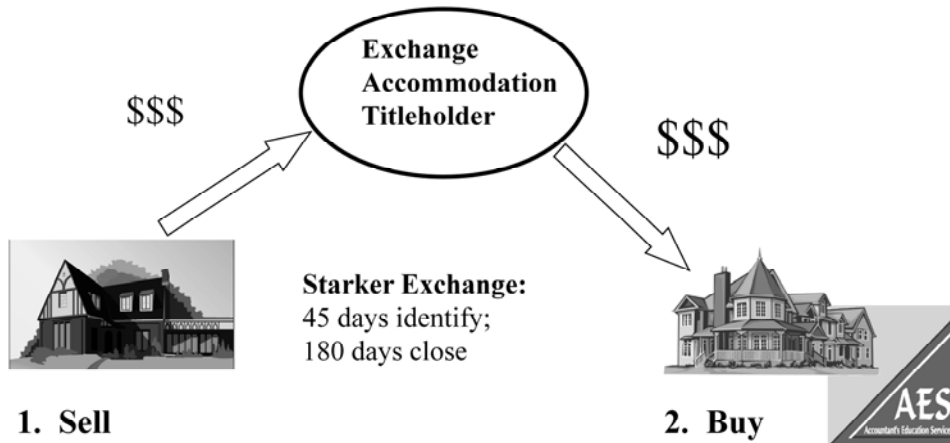
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## Section 1031 New Slide

- Three Requirements
- (1) Exchange
- (2) Like Kind Property
- (3) Business or Investment Property



## **Passive Activities Real Estate Professionals**

### **New Slide.**

- Sec 469(c)(7)
  - Qualifying Real Estate Professionals may treat rental real estate activities as non-passive
  
- Real Estate Professional if:
  - More than 50% of the taxpayer's personal services and
  - More than 750 hours are performed in real property trade or businesses which the taxpayer materially participates in.

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## **Passive Activities Real Estate Professionals**

### **New Slide**

#### ■ Second Material Participation Test

- After proving material participation as a real estate professional
- Then, must also prove material participation in the rental activity for which the deduction is claimed.
- 500 hundred hours per year, **or**
- For more than 100 hours and no other person materially participates more
- An election may be made to aggregate rental real estate activities to meet the 500/100 hour requirement – Treas Reg. 1.469-5(T)(a)



## **Death of Payee Spouse**

### **New Slide**

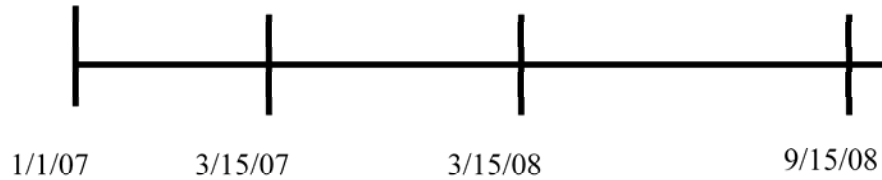
- A. Payments **Do Not** End on Death of Spouse
  - 1. Pennsylvania, Oregon
  - 2. Texas – *Salzman v. Comm'r*, TC Summ. Op. 2007-190
  
- B. Payments **End** on Death of Spouse
  - 1. Tennessee *Perkins v. Comm'r*, T.C. Memo. 2008-41; but see lump sum
  - 2. California *Johanson v. Comm'r*, (TC Memo 2006)
  - 3. New York – *Wolf* (TC. Summ. Op. 2005-150;
  - 4. Colorado CRS 14-10-122(3)
  - 5. New Jersey

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## Chapter 10 - Subchapter S - New Slide

- Rev Proc. 2004-48 P. 10-11; C.1
- Must file and complete form 2553 within 6 months after the due date of the tax return, including extensions

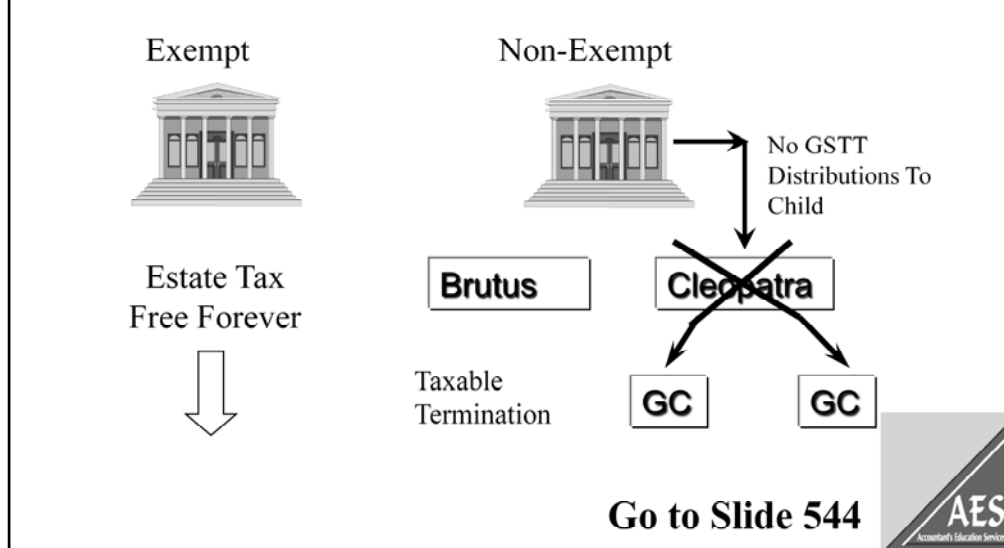


- Some reasonable Excuse
- Not an LLC v S Corp planning device





## Distributions First From Non-Exempt



### 1. Distributions First From the Non-Exempt Trust - Continued

The above diagram shows how all distributions from the exempt trust will be transfer tax (i.e. estate tax or GSTT) free forever. However, when Cleopatra dies, if any assets are left in the non-exempt trust, there will be a taxable termination. Therefore, should any distributions be made to Cleopatra, they should first be from the non-exempt trust, thereby reducing the amount that will be subject to a taxable termination.

### 2. Possible General Power of Appointment

The GST tax is imposed at the highest estate tax rate. On the other hand, if the person who's death creates a taxable termination holds a GPA, the trust will be included in his or her estate, and there will be no GSTT tax. In this case, the property will be included in the child or grandchild's estate and may be taxed at the child's or grandchild's lower estate tax rate.

Please note, the incremental federal tax saved by the possible lower estate tax rate must be compared to any possible state estate tax imposed by holding a GPA. In other words, the GPA may result in a state estate tax inclusion, whereas a taxable termination for GSTT purposes may not result in any state estate tax inclusion issue. Since it is uncertain where a beneficiary may live when his or her estate would be subject to a taxable termination, rather than create a mandatory testamentary GPA, some practitioners prefer to grant the trustee the power to grant GPAs as needed.