

At-Risk Limitations Section 465 and Completing Form 6198: Transfers and dispositions of interests in the at-risk activity

Prepared by:
John R. Dundon II, E.A.
Taxpayer Advocacy
Services Inc.

LORMAN[®]

INTRODUCING

Lorman's New Approach to Continuing Education

ALL-ACCESS PASS

The All-Access Pass grants you **UNLIMITED** access to Lorman's ever-growing library of training resources:

- ☑ Unlimited Live Webinars - 120 live webinars added every month
- ☑ Unlimited OnDemand and MP3 Downloads - Over 1,500 courses available
- ☑ Videos - More than 1300 available
- ☑ Slide Decks - More than 2300 available
- ☑ White Papers
- ☑ Reports
- ☑ Articles
- ☑ ... and much more!

Join the thousands of other pass-holders that have already trusted us for their professional development by choosing the All-Access Pass.



Get Your All-Access Pass Today!

SAVE 20%

Learn more: www.lorman.com/pass/?s=special20

Use Discount Code Q7014393 and Priority Code 18536 to receive the 20% AAP discount.

*Discount cannot be combined with any other discounts.



Taxpayer Advocacy Services Inc.

John R Dundon II, Enrolled Agent #00085353EA PTIN P00605639
(c) 720-234-1177 John@JohnRDundon.com <http://JohnRDundon.com>

At-Risk Limitations Section 465 and Completing Form 6198: Transfers and Dispositions of Interests In the At-Risk Activity

Under proposed regulations, the following rules would apply to a transfer (or disposition) in which: the taxpayer transfers or disposes of his ***entire interest*** in the activity, or entity conducting the activity, the transferee's basis is determined by reference to the transferor's, and the transferor had previously disallowed losses under the at-risk rules at the time of the transfer or disposition...

If, at the close of the tax year of the transfer or disposition, the taxpayer's losses subject to the at-risk rules exceed his at-risk amount, the excess would be added to his basis in the activity under proposed regulations. This addition to basis would be made after determining the transferor's gain and would apply solely for determining the basis of the property in the hands of the transferee.

Under proposed regulations, the following rules would apply to a transfer (or disposition) in which: (1) the taxpayer transfers or disposes of his entire interest in the activity, or entity conducting the activity, (2) the transferee's basis is determined by reference to the transferor's, and (3) the transferor's at-risk amount exceeds his losses from the activity...

At the end of the transferor's tax year of the transfer, his amount at risk (after reduction for that year's losses) would be added to the transferee's amount at risk under proposed regs. The transferee's at-risk amount would also be increased to the extent his basis is increased for gift tax paid by the transferor.

However, under proposed regulations, the transferee's at-risk amount couldn't be increased under these rules by more than the excess of his basis over the amount he is considered to have paid at the time of the transfer (including, for these purposes, the amount of debt to which the transferred property is subject).

Examples

Example 1: On the last day of the year, F makes a gift to G of his entire interest in an activity subject to the at-risk rules. F's at-risk amount was \$500, his basis in the activity was \$9,500, the fair market value of the activity is \$20,000 and the interest is subject to a nonrecourse debt of \$9,000.

G takes the gift subject to the debt.

Since F's at-risk amount is \$500 at year-end, \$500 would be added to G's at-risk amount under proposed regulations. The limitation described above wouldn't apply because G's basis (\$9,500) (F's basis carried over to her) exceeds the amount she is considered to have paid (\$9,000) by \$500.

Her at-risk amount would be \$500.



Taxpayer Advocacy Services Inc.

John R Dundon II, Enrolled Agent #00085353EA PTIN P00605639
(c) 720-234-1177 John@JohnRDundon.com <http://JohnRDundon.com>

Example 2: In example (1), if G had paid \$1,500 in cash in addition to assuming the debt, her at-risk amount would not increase because her basis would not exceed the amount paid.

Her basis would be \$10,500 (\$1,500 cash paid + \$9,000 debt assumed) and her amount paid would be the same. In this case, however, G's at-risk amount would be increased (to \$1,500) by the \$1,500 cash she paid.

Amounts considered at risk

(1) In general

A taxpayer shall be considered at risk for an activity including—

(A) the amount of money and the adjusted basis of other property contributed by the taxpayer to the activity, **and**

(B) amounts borrowed with respect to such activity

(2) Borrowed amounts

A taxpayer shall be considered at risk with respect to amounts borrowed for use in an activity to the extent that (s)he—

(A) is personally liable for the repayment of such amounts, **or**

(B) has pledged property

- other than property used in such activity, as security for such borrowed amount (to the extent of the net fair market value of the taxpayer's interest in such property).
- No property shall be taken into account as security if such property is directly or indirectly financed by indebtedness which is secured by property described in paragraph (1).

(3) Certain borrowed amounts excluded

(A) **In general**



Taxpayer Advocacy Services Inc.

John R Dundon II, Enrolled Agent #00085353EA PTIN P00605639
(c) 720-234-1177 John@JohnRDundon.com <http://JohnRDundon.com>

- Amounts borrowed shall **not** be considered to be at risk with respect to an activity if such amounts are borrowed from any person who has an interest in such activity or from a related person to a person (other than the taxpayer) having such an interest.
- AMOUNTS NOT AT RISK
<https://www.irs.gov/pub/irs-pdf/i6198.pdf>
 1. Nonrecourse loans used to finance the activity unless the nonrecourse loan was secured using real property (more later)
 2. Borrowed amounts protected against loss
 3. Amounts borrowed from a related person (more later)
 4. Any amount contributed that is protected against loss

(B) **Exceptions**

- Interest as creditor
- Interest as shareholder with respect to amounts borrowed by corporation

(C) **Related person**

- 26 U.S. Code § 267- Losses, expenses, and interest with respect to transactions between related taxpayers:

267(b) Relationships

- (1) Members of a family
- (2) An individual and a corporation more than **50 percent** in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual
- (3) Two corporations
- (4) A grantor and a fiduciary of any trust



Taxpayer Advocacy Services Inc.

John R Dundon II, Enrolled Agent #00085353EA PTIN P00605639
(c) 720-234-1177 John@JohnRDundon.com <http://JohnRDundon.com>

(5) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts

(6) A fiduciary of a trust and a beneficiary of such trust

(7) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts

(8) A fiduciary of a trust and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(9) A person and an organization to which **section 501 (relating to certain educational and charitable organizations which are exempt from tax)** applies

(10) A corporation and a partnership if the same persons own more than **50 percent** in value of the outstanding stock of the corporation, and more than **50 percent** of the capital interest, or the profits interest, in the partnership

(11) An S corporation and another S corporation if the same persons own more than **50 percent** in value of the outstanding stock of each corporation

(12) An S corporation and a C corporation, if the same persons own more than **50 percent** in value of the outstanding stock of each corporation; or

(13) Except in the case of a sale or exchange in satisfaction of a pecuniary bequest, an executor of an estate and a beneficiary of such estate.

- **26 U.S. Code § 707 - Transactions between partner and**



Taxpayer Advocacy Services Inc.

John R Dundon II, Enrolled Agent #00085353EA PTIN P00605639
(c) 720-234-1177 John@JohnRDundon.com <http://JohnRDundon.com>

partnership

<https://www.law.cornell.edu/uscode/text/26/707>

section 707(b)(1) Certain sales or exchanges of property with respect to controlled partnerships

(1) Losses disallowed

No deduction shall be allowed in respect of losses from sales or exchanges of property (other than an interest in the partnership), directly or indirectly, between—

(A) a partnership and a person owning, directly or indirectly, more than **50 percent** of the capital interest, or the profits interest, in such partnership, or

(B) two partnerships in which the same persons own, directly or indirectly, more than **50 percent** of the capital interests or profits interests...

- The related person and such person are engaged in trades or business under common control within the meaning of subsections (a) and (b) of section 52:

<https://www.law.cornell.edu/uscode/text/26/52>

26 U.S. Code § 52 - Special rules

(a) Controlled group of corporations

(b) Employees of partnerships, proprietorships, etc., which are under common control

- 267(b) or 707(b)(1), "**10 percent**" shall be substituted for "**50 percent**".

(4) Exception



Taxpayer Advocacy Services Inc.

John R Dundon II, Enrolled Agent #00085353EA PTIN P00605639
(c) 720-234-1177 John@JohnRDundon.com <http://JohnRDundon.com>

A taxpayer shall **not** be considered at risk with respect to amounts protected against loss through nonrecourse financing, guarantees, stop loss agreements, or other similar arrangements.

(5) Amounts at risk in subsequent years

If in any taxable year the taxpayer has a loss from an at-risk activity, the amount with respect to which a taxpayer is considered to be at risk in subsequent taxable years shall be reduced by that portion of the loss which is allowable as a deduction.

(6) Qualified nonrecourse financing treated as amount at risk

(A) In general

- Qualified Nonrecourse Financing
<https://www.irs.gov/pub/irs-pdf/i6198.pdf>

Financing for which no one is personally liable for repayment and borrowed in connection with holding and securing real property and not convertible to debt

- In the case of an activity of holding real property, a taxpayer shall be considered at risk with respect to the taxpayer's share of any **qualified nonrecourse financing** which is secured by real property used in such activity.

(B) Qualified nonrecourse financing

- For purposes of this paragraph, the term "**qualified nonrecourse financing**" means any financing—
 - (i) which is borrowed by the taxpayer with respect to the activity of holding real property,
 - (ii) which is borrowed by the taxpayer from a **qualified person**



Taxpayer Advocacy Services Inc.

John R Dundon II, Enrolled Agent #00085353EA PTIN P00605639
(c) 720-234-1177 John@JohnRDundon.com <http://JohnRDundon.com>

or represents a loan from any Federal, State, or local government or instrumentality thereof, or is guaranteed by any Federal, State, or local government,

(iii) except to the extent provided in regulations, with respect to which no person is personally liable for repayment, and

(iv) which is not convertible debt.

(C) Special rule for partnerships

In the case of a partnership, a partner's share of any **qualified nonrecourse financing** of such partnership shall be determined on the basis of the partner's share of liabilities of such partnership incurred in connection with such financing (within the meaning of **26 U.S. Code § 752 - Treatment of certain liabilities**).

(D) Qualified person defined

- "qualified person" has the meaning given such term by:

26 U.S. Code § 49 - At-risk rules

<https://www.law.cornell.edu/uscode/text/26/49>

Section 49(a)(1)(D)(iv)

(iv) Qualified person

Any person which is actively and regularly engaged in the business of lending money and **not** related to the taxpayer, the seller of the property (or the seller's relative), or a person who receives a fee for the investment in the property.

- Some relatives are considered qualified persons if the terms of the loan are comparable to commercially acquired loans

(E) Activity of holding real property



Taxpayer Advocacy Services Inc.

John R Dundon II, Enrolled Agent #00085353EA PTIN P00605639
(c) 720-234-1177 John@JohnRDundon.com <http://JohnRDundon.com>

- **Incidental personal property and services**

The activity of holding real property includes the holding of personal property and the providing of services which are incidental to making real property available as living accommodations.

Mineral property

The activity of holding real property shall not include the holding of mineral property.

The material appearing in this website is for informational purposes only and is not legal advice. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship. The information provided herein is intended only as general information which may or may not reflect the most current developments. Although these materials may be prepared by professionals, they should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.

The opinions or viewpoints expressed herein do not necessarily reflect those of Lorman Education Services. All materials and content were prepared by persons and/or entities other than Lorman Education Services, and said other persons and/or entities are solely responsible for their content.

Any links to other websites are not intended to be referrals or endorsements of these sites. The links provided are maintained by the respective organizations, and they are solely responsible for the content of their own sites.