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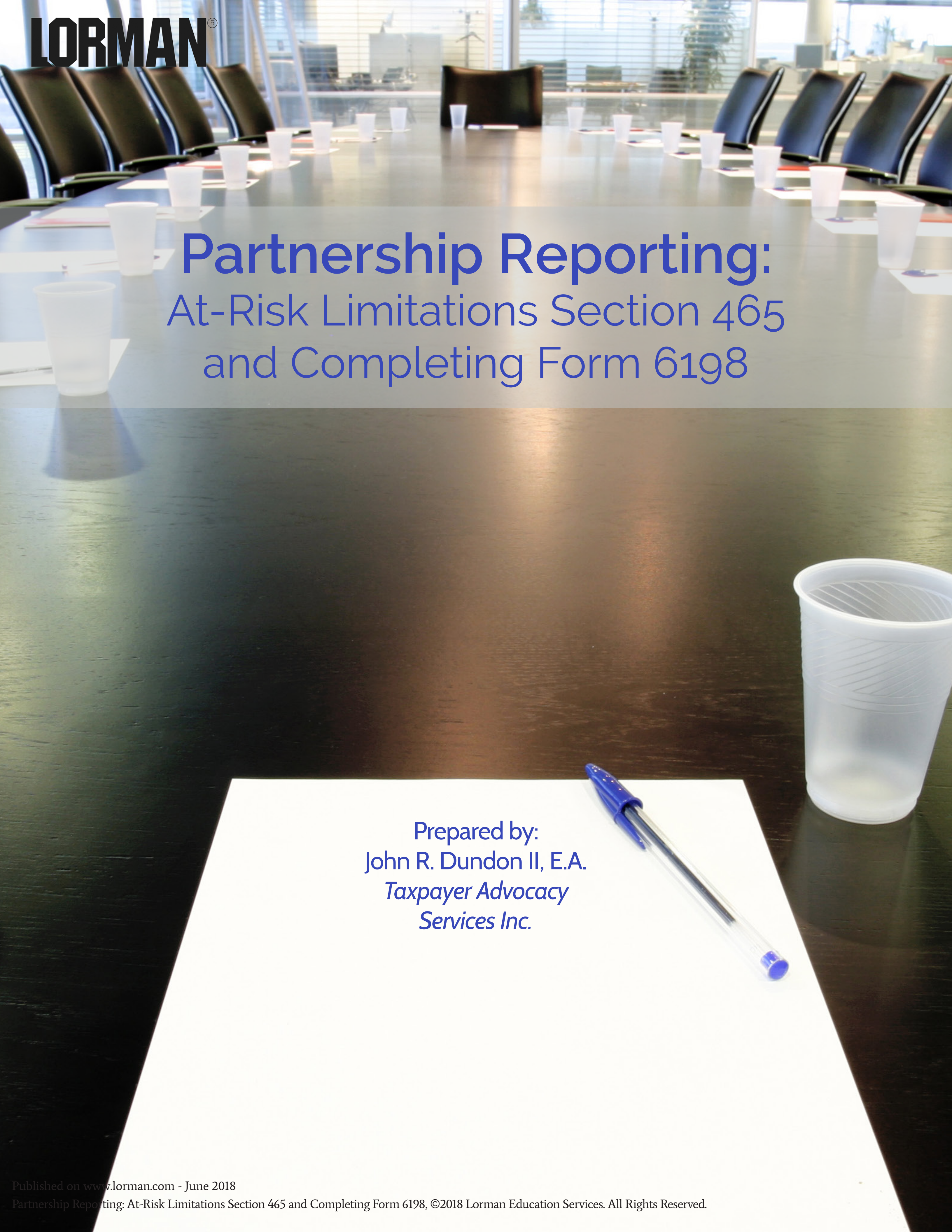

Partnership Reporting:
At-Risk Limitations Section 465 and Completing Form 6198

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Partnership Reporting:
At-Risk Limitations Section 465 and Completing Form 6198

Although partnerships are not required to file Form 6198, the instructions to the form state:

Partnerships and S corporations must give their partners and shareholders a separate statement of income, expenses, and deductions for each at-risk and non-at-risk activity.

Item K of Schedule K-1 has three lines for reporting a partner's share of three different types of partnership debt: nonrecourse debt, recourse debt and qualified nonrecourse financing.

The partner's share of nonrecourse debt that does not meet the definition of qualified nonrecourse financing should be reported on the nonrecourse line of Item K.

Definition of loss

For purposes of this section, the term “loss” means the excess of the deductions allowable under this chapter for the taxable year (determined without regard to the first sentence of subsection (a)) and allocable to an activity to which this section applies over the income received or accrued by the taxpayer during the taxable year from such activity.

Carrying Over and Deducting Suspended At-risk Losses.

If a partner cannot deduct partnership losses because of the at-risk limitations, the losses are carried forward indefinitely.

The losses become deductible when the partner has a sufficient amount at risk to deduct the losses (for example, because of additional cash contributions, partnership income, or debt restructuring).

Partnership losses that are partially deductible in a tax year under the at-risk rules are deducted in the following order:

1. Capital losses.
2. Section 1231 losses.
3. All other deductions except for tax preference items under IRC Sec. 57.
4. Tax preference items under IRC Sec. 57 (depletion, excess IDC, reserves for losses of financial institutions, tax-exempt interest, and accelerated depreciation of pre-'87 property).

Calculating deductible at-risk losses and tracking of suspended at-risk losses.

W126: Carryforward Worksheet for Calculating Deductible At-risk Losses and Tracking Suspended At-risk Losses

Client Name/ID:		Tax Year Ended:	
Prepared by:		Date Prepared:	
Reviewed by:		Date Reviewed:	

Amount at risk at the end of the year. Enter the amount from Worksheet W112, line 14.	$	
Add back the current year losses shown on line 13 of Worksheet W112.		( )
Losses allowed.	A	0

Description	B Prior Year's Carryover Due to At Risk Limitation	C Current Year's Losses	B + C = D Total Available Losses		
1. Capital loss			0		
2. Section 1231 loss			0		
3. Other nonpreference losses			0		
4. Other preference losses			0		
5. Total losses available	0	0	0	5.D.	0

Subtract 5.D. from A. $ 0

If A ≥ 5.D., all losses will be deducted and there will be no carryforward. **STOP - No Carryforward.**
If A < 5.D., the difference is the amount that carries forward to the succeeding year.

Determining the character of deductible and suspended at-risk losses:

Losses are deducted in the order listed above. Prior year losses in the categories are deducted before the current year losses in those categories (FIFO). Only after a category is completely exhausted (both prior year and current year) is the next category utilized.

Enter at the top of column 2 the amount from item A above. Enter in column 1 the losses available, which are taken from the table shown above. Reduce the available loss entered at the top of column 2 by the losses available in the order shown below. Once the amount in column 2 is reduced to zero, no further losses are deductible. Enter any unused amounts in column 3. These amounts will be carried forward to the succeeding year.

	1 Losses Available	2 Losses Allowed	3 Losses Carried Forward
Loss allowed from A		$ 0	
Capital			
- prior year	$ 0	$ 0	$ 0
- current year	0	0	0
Section 1231			
- prior year	0	0	0
- current year	0	0	0
Other nonpreference			
- prior year	0	0	0
- current year	0	0	0
Other preference			
- prior year	0	0	0
- current year	0	0	0

Note:
This worksheet can be used to calculate the amount of a partner's deductible at-risk loss and track the partner's suspended at-risk losses.

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Determining amount at risk via Form 6198.

In 2015, Carl and his brother, Bud, formed a partnership (the C&B Partnership) with each brother owning a 50% interest.

Each contributed $5,000 cash, which C&B used as a down payment to acquire a small apartment building.

In addition, C&B took out a nonrecourse mortgage note for $150,000.

This rental property was purchased from, and the mortgage note issued to, a bank that had acquired it in foreclosure the previous year.

Because the lender is also the seller of the property, the note is not qualified nonrecourse financing for at-risk purposes.

Carl and Bud were each allocated a $5,000 deductible loss in 2015.

As of January 1, 2016, each partner had an adjusted basis in his partnership interest of $75,000 ($5,000 cash contribution plus $75,000 allocable share of partnership debt less $5,000 loss recognized in the prior year).

In 2016, Carl and Bud each contributed $3,000 to the partnership.

C&B, in turn, used $4,000 to pay down the principal on its debt and the remaining $2,000 for other expenses.

For 2016, C&B incurred a loss of $14,000, of which Carl and Bud were each allocated $7,000.

Carl's allowable loss of $3,000 in 2016 is computed using Form 6198.

<u>Form 6198, Part II, allows a simplified at-risk computation that refers to adjusted basis in the activity as of the beginning of the tax year.</u>

Part III contains a detailed computation of at-risk beginning with the acquisition of the activity or, if later, the date it became subject to the at-risk rules.

Here, Carl's at-risk amount is the same whether computed using Part II or III of Form 6198 (which is often the case for most partnership investments).

In other cases, however, using the detailed Part III computation can result in a higher amount at risk; therefore, the Part III computation should always be considered.

<u>Warning: Carryforward at-risk losses can only be applied against future income or other future amounts at risk from the same activity.</u>

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Example: Carryover of suspended losses.

Tex Tucker is a limited partner in Dry Hole Partners, an oil drilling venture.

Tex's tax basis in his partnership interest (i.e., his outside basis) at the beginning of 2016 was $1,375,000, which equaled his $375,000 capital contribution and his $1 million share of a partnership nonrecourse note.

Because nonrecourse debt does not increase the amount at risk except (potentially) for real estate activities, Tex's amount at risk at the beginning of 2015 was limited to his $375,000 cash contribution.

Tex's distributive share of 2016 partnership net losses is $500,000, which consists of:

Short-term capital loss	-75000
Ordinary income (loss)	-300000
Portfolio Income	25000
Section 1231 loss	-150000
Total	-500000

Tex's amount at risk at the end of December 31, 2016, equals his beginning of the year amount at risk of $375,000, plus the $25,000 of portfolio income allocated to him.

Therefore, Tex is only allowed to deduct $400,000 of the loss items in 2016—the sum of his $375,000 beginning amount at risk, plus the $25,000 of portfolio income.

Based on the priority rules for deducting losses under the at-risk rules, Tex will be allowed to deduct the $75,000 capital loss, the $150,000 Section 1231 loss, and $175,000 of the ordinary loss [Prop. Reg. 1.465-38].

The remaining ordinary loss of $125,000 will be carried forward to 2017. Note that Tex's net deductible loss is only $375,000—because the $25,000 of portfolio income offsets a portion of the $400,000 of deductible loss items.

Gains from the disposition of assets involved in an activity, or from the disposition of a partnership interest, increase a taxpayer's amount at risk (Prop. Reg. 1.465-12).

However, if a taxpayer has loss carryforwards under the at-risk rules in excess of gain on disposition, there is no rule allowing deduction of remaining unused at-risk losses.

Form **6198** (Rev. November 2009) Department of the Treasury Internal Revenue Service

At-Risk Limitations
► Attach to your tax return.
► See separate instructions.

OMB No. 1545-0712
Attachment Sequence No. 31

Name(s) shown on return: **Tex Tucker**
Identifying number: **241-99-8870**
Description of activity (see page 2 of the instructions): **Dryhole Partners—Oil and Gas**

Part I Current Year Profit (Loss) From the Activity, Including Prior Year Nondeductible Amounts. See page 2 of the instructions.

1	Ordinary income (loss) from the activity (see page 2 of the instructions)	1	(300,000)
2	Gain (loss) from the sale or other disposition of assets used in the activity (or of your interest in the activity) that you are reporting on:		
a	Schedule D	2a	(75,000)
b	Form 4797	2b	(150,000)
c	Other form or schedule	2c	
3	Other income and gains from the activity, from Schedule K-1 of Form 1065, Form 1065-B, or Form 1120S, that were not included on lines 1 through 2c	3	25,000
4	Other deductions and losses from the activity, including investment interest expense allowed from Form 4952, that were not included on lines 1 through 2c	4	( )
5	Current year profit (loss) from the activity. Combine lines 1 through 4. See page 3 of the instructions before completing the rest of this form	5	(500,000)

T**ex's completed Form 6198.**

Disposition of activity or partnership interest.

Gerald has a $5,000 suspended loss carryforward under the at-risk rules coming into the current year.

Part II Simplified Computation of Amount At Risk. See page 3 of the instructions before completing this part.

6	Adjusted basis (as defined in section 1011) in the activity (or in your interest in the activity) on the first day of the tax year. **Do not** enter less than zero	6	1,375,000
7	Increases for the tax year (see page 3 of the instructions)	7	0
8	Add lines 6 and 7	8	1,375,000
9	Decreases for the tax year (see page 4 of the instructions)	9	1,000,000
10a	Subtract line 9 from line 8 ► 10a 375,000		
b	If line 10a is **more** than zero, enter that amount here and go to line 20 (or complete Part III). Otherwise, enter -0- and see **Pub. 925** for information on the recapture rules	10b	375,000

During this year, he disposes of his partnership interest at a gain of $3,000.

This $3,000 current year gain increases Gerald's amount at risk, and $3,000 of his suspended at-risk

Part IV Deductible Loss

20	**Amount at risk.** Enter the **larger** of line 10b or line 19b	20	375,000
21	**Deductible loss.** Enter the **smaller** of the line 5 loss (treated as a positive number) or line 20. See page 8 of the instructions to find out how to report any deductible loss and any carryover	21	(375,000)

Note: *If the loss is from a passive activity, see the Instructions for* ***Form 8582,*** *Passive Activity Loss Limitations, or the Instructions for* ***Form 8810,*** *Corporate Passive Activity Loss and Credit Limitations, to find out if the loss is allowed under the passive activity rules. If only part of the loss is subject to the passive activity loss rules, report only that part on Form 8582 or Form 8810, whichever applies.*

For Paperwork Reduction Act Notice, see page 8 of the instructions. Cat. No. 50012Y Form **6198** (Rev. 11-2009)

loss carryover is used. The remaining $2,000 at-risk loss carryover disappears.

Effect of Transfer of Interest on Suspended At-risk Losses

If a partner transfers his entire interest in an at-risk activity and the transferor partner's basis carries over to the transferee (e.g., a gift, a contribution to a corporation or partnership, a transfer to a trust, or a charitable contribution), any suspended at-risk losses are added to the tax basis (not the at-risk calculation) of the transferor partner in determining the substituted basis of the transferee partner.

Because the transferor had an at-risk limitation, the transferee partner's at-risk amount is generally zero.

However, if the transferor partner has an amount at risk in the activity, that amount carries over to the transferee partner.

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If the transfer is a gift, the donee partner can add a portion of the gift tax paid to the basis of the property received.

The increase is equal to the gift tax attributable to the difference between the FMV and adjusted basis of the gifted property.

The at-risk amount of the property in the hands of the donee partner is also increased by the amount of gift tax, which can be added to the basis.

The total increase in the donee's amount at risk for both the carryover of the donor's at-risk amount and the gift tax step-up is subject to a limitation.

This limitation, provides that the increase in the amount at risk cannot exceed the excess of the donee partner's tax basis over the amount he is deemed to pay for the transferred interest (including the transferee partner's share of liabilities).

Observation: Where the donor has a negative tax capital account, income from relief of debt may arise.

Gift of partnership interest with suspended at-risk losses.

George owns an interest in JSC Partners, which operates a single at-risk activity.

He has a $100,000 tax basis and zero at risk.

The FMV of George's partnership interest is $200,000 and his share of partnership liabilities is $90,000.

George has suspended partnership losses of $50,000 due to the at-risk rules.

In the current year, George decides to gift his partnership interest to his son, Elroy.

George pays $24,000 of gift tax on the transfer.

For tax purposes, Elroy assumes George's $100,000 tax basis, adjusted for the previously suspended at-risk losses of $50,000 and the portion of the gift tax paid relating to the net appreciation of the gifted property.

The increase in basis due to the gift tax paid is $12,000 [($200,000 − $100,000) ÷ 200,000 × $24,000].

Elroy's tax basis in JSC Partners is $162,000 ($100,000 carryover basis + $50,000 suspended at-risk losses + $12,000 gift tax step-up).

Elroy also assumes George's amount at risk of zero in his partnership interest.

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The amount at risk can be increased by the $12,000 gift tax.

Therefore, prior to applying the limitation under Prop. Reg. 1.465-68(c), Elroy's amount at risk in the gifted partnership interest is $12,000.

The $12,000 is not subject to limitation since Elroy's tax basis of $162,000 exceeds the amount he paid for his interest (i.e., $90,000—Elroy's share of partnership liabilities) by more than $12,000.

Gift of partnership interest when the donor partner has a positive amount at risk.

Assume the same facts as in Example 29E-5, except George has an amount at risk in JSC Partners of $40,000 and has no previously suspended at-risk losses.

Elroy's tax basis in the gifted partnership interest is $112,000 (the $100,000 carryover basis + the $12,000 gift tax).

His amount at risk will be $52,000 (the $40,000 carryover at-risk amount + the $12,000 gift tax).

However, Elroy's amount at risk is limited to $22,000, since that is the amount his basis of $112,000 exceeds the amount he paid for the partnership interest (i.e., $90,000—his share of partnership liabilities).

When a partner dies owning an at-risk activity with suspended losses, the treatment of such losses is not clear in the regulations.

However, since these losses are treated as personal to the transferor, it appears suspended at-risk losses disappear upon the death of a partner.

The regulations do address the calculation of the successor partner's amount at risk.

A partner who inherits an interest in an at-risk activity receives the amount at risk of the decedent.

Regulations address transfers of at-risk activities from an individual to the individual's bankruptcy estate.

These regulations also address transfers of at-risk activities from an individual's bankruptcy estate to the individual (either prior to or at the time the estate terminates).

A bankruptcy estate [arising under Chapter 7 (relating to liquidations) or Chapter 11 (relating to reorganizations) of Title 11 of the United States Code] succeeds to the unused at-risk losses of an individual debtor as of the first day of the tax year in which the bankruptcy case commences.

A transfer of an activity from the bankruptcy estate to the debtor before the estate's termination is not treated as a taxable disposition.

The debtor succeeds to the estate's unused at-risk losses from the activity.

If only a portion of the assets used in an activity are transferred, an allocation of unused at-risk losses is made.

The regulations also provide that the debtor succeeds to the estate's unused at-risk losses upon termination of the estate.

Recapture of losses where amount at risk is less than zero

(1) In general

If zero exceeds the amount for which the taxpayer is at risk in any activity at the close of any taxable year—

(A) the taxpayer shall include in his gross income for such taxable year (as income from such activity) an amount equal to such excess, and

(B) an amount equal to the amount so included in gross income shall be treated as a deduction allocable to such activity for the first succeeding taxable year.

There's a recapture of previously allowed losses when the at-risk amount is reduced below zero. This rule works by providing that, if the amount at-risk is reduced below zero (by distributions to the taxpayer, by changes in the status of indebtedness from recourse to nonrecourse, by the beginning of a guarantee or other similar arrangement that affects the taxpayer's risk of loss, or otherwise), then the taxpayer recognizes income to the extent that his at-risk basis is reduced below zero. But the amount recaptured is limited to the excess of the losses previously allowed in that activity over any amounts previously recaptured. The amount added to income is treated as a deduction allocable to the activity in the first succeeding year and is allowed if and to the extent that the taxpayer's at-risk basis is increased.

A $200,000 debt of taxpayer's that had been part of his at-risk amount became “nongenuine” after his at-risk amount was reduced to zero via flow-thru losses and distributions.

So taxpayer's at-risk amount was reduced to negative $200,000, and he was required to recognize $200,000 of gain

(2) Limitation

The excess referred to in paragraph (1) shall not exceed the aggregate amount of the reductions of losses for all prior taxable years beginning after December 31, 1978, reduced by the amounts previously included in gross income

Recapturing Losses When the Amount at Risk Is Less Than Zero

Since deductions for losses are allowable only to the extent the taxpayer has amounts at risk in an activity, it is logical that Congress would provide for the recapture of deductions previously allowed if the amount a taxpayer has at risk in an activity goes below zero.

The legislative history of IRC Sec. 465 does not provide any guidance as to the nature of the income reported when a taxpayer's amount at risk falls below zero.

A practical approach would be to either report the entire amount as ordinary income or to report a prorata share of the income as capital, ordinary, Section 1231, etc., based on the total amount of at-risk losses previously deducted.

This recaptured income is reported on the partner's tax return.

The amount subject to recapture is equal to the amount by which the amount at-risk is less than zero. Losses cannot reduce the amount at risk below zero (and, of course, cannot be deducted to the extent they exceed the positive amounts at risk).

Certain events can, however, cause the amount at risk to go below zero. These events include:

a. Distributions of cash or property to the partner.

b. Reductions in the amount of recourse indebtedness for which the partner bears the economic risk of loss.

c. Guarantees of liabilities by others.

The amount recaptured cannot exceed (a) post-1978 losses previously allowed in the activity that reduced the taxpayer's amount at risk with respect to that activity, less (b) amounts recaptured in earlier years [IRC Sec. 465(e)(2)].

Amounts recaptured are recognized as income on the partner's income tax return in the year of recapture and are treated as a deduction in the succeeding tax year in which the taxpayer's amount at risk has sufficiently increased to absorb the loss.

Example : Recapture of previously deducted at-risk losses.

On December 31, 20X1, Christine owns a 50% partnership interest in which she has a $200,000 tax basis and no amount at-risk.

Christine has previously suspended at-risk losses of $50,000 from the partnership and has deducted losses in excess of $300,000 in prior years.

During 20X2, she receives a $10,000 distribution and is allocated a tax loss of $25,000.

Since the distribution reduces Christine's amount at risk below zero, she is required to report income of $10,000 for 20X2.

The $25,000 disallowed loss for 20X2 and the $10,000 loss created when Christine reported income on the distribution are suspended and carried forward indefinitely until Christine's amount at-risk is increased by an amount sufficient to allow deduction of all or part of the suspended losses.

Example: Avoiding recapture of previously allowed losses.

Steve became the sole general partner in a limited partnership many years ago. He received his partnership interest for a contribution of cash, equipment, and real estate. As of January 1, 20X1, Steve's amount at risk is $50,000. He prepared the following forecast of his share of various partnership items for 20X1 through 20X4

	20X1	20X2	20X3	20X4
Share of taxable income/(loss)	-$50,000.00	$10,000.00	-$35,000.00	$13,000.00
Cash distribution to Steve	—	20000	—	—

Steve materially participates in the partnership business operations.

Steve estimates that the partnership will need to borrow $65,000 in 20X3. His banker advises that the loan would probably have to be recourse, at least initially, but suggests that the bank may agree to convert the debt to a nonrecourse loan if agreed-on performance thresholds are met. The nonrecourse loan would not meet the definition of qualified nonrecourse financing.

The following is a calculation of Steve's projected amounts at risk:

	20X1	20X2	20X3	20X4
At-risk balance, beginning of year	$50,000	$ —	$ — a	$20,000
Increases in amounts at risk during year:				
Additional borrowings for which partner is personally liable			65,000 b	
Taxable income		$10,000		$13,000
Decreases in amounts at risk during year:				
Distributions		-$20,000		
Decrease in borrowings for which partner is personally liable				(65,000 c)
Tax loss	-$50,000		-$35,000	
Recaptured loss allowed			(10,000 d)	
At-risk balance, end of year (before recapture)	$0	-$10,000	$20,000	-$32,000
Recapture of prior losses	—	10,000 e	—	32,000 f
At-risk balance, end of year	$0	$0	$20,000	$0

Notes:

a The amount at risk at the beginning of 20X3 is zero, rather than negative $10,000, because the negative amount at the end of 20X2 was recaptured.

b Assuming the debt is recourse.

c The conversion of debt from recourse to nonrecourse is considered a reduction of the amount borrowed for which the partner is personally liable, and therefore causes a reduction in the partner's amount at risk.

d The loss recapture of $10,000 from 20X2 is allowed as an additional deductible loss in 20X3.

e Since the distribution in 20X2 exceeds the amount at risk that year by $10,000, Steve has to recapture $10,000 of previously allowed losses.

f The reduction of the amount at risk below zero causes a recapture of $32,000 of previously allowed losses.

If, in any year, tax losses exceed the amount at risk, these losses are allowable only to the extent of the at-risk balance. Such losses cannot cause the amount at risk to go below zero.

Steve's share of taxable income and losses under the fact pattern presented would be as follows:

	20X1	20X2	20X3	20X4
Share of taxable income (loss)	-$50,000	$10,000	-$35,000	$13,000
Recapture of prior losses	—	$10,000	—	$32,000
Deduction of prior recapture	—	—	-$10,000	—
Share of total income (loss)	-$50,000	$20,000	-$45,000	$45,000
Steve's at-risk balance at the end of 20X4 would be zero, as follows:				
Cumulative income (losses)				-$30,000
Cash distributed				-$20,000
Original at-risk balance				$50,000
Ending at-risk balance				$0

Financing must be recourse if the amounts at risk are to be maximized. Although there is real economic incentive to convert recourse debt to nonrecourse debt, the practitioner should advise his client that any such conversion causes a reduction in the amount considered to be at risk by the partners who were previously liable for the debt (unless the nonrecourse debt is qualified nonrecourse financing).

Planning the timing of the conversion of recourse debt to nonrecourse debt is extremely important.

The practitioner should be careful to ascertain whether the conversion causes a negative balance in the partners' amounts at risk at the end of the year.

If feasible, the client should be advised to delay the conversion until a later year when it will not cause amounts at risk to go below zero.

Similarly, the practitioner should advise the client to use care in the timing of distributions of cash or property to the partners.

Distributions can also reduce the partners' at risk amount below zero and, thereby, cause previously allowed losses to be recaptured.

FORM 6198 PART I

CURRENT YEAR PROFIT (LOSS) FROM THE ACTIVITY, INCLUDING PRIOR YEAR NONDEDUCTIBLE AMOUNTS

TAXPAYERS OTHER THAN PARTNERS OR S CORPORATION SHAREHOLDERS:

If you had prior year losses, document those losses on the appropriate returns:

> Ex. A Schedule C loss on line 31 of $1,500 where only $500 was allowed because of At-Risk limitations

Include $1000 on Schedule C, part V, Other expenses and identify it as “prior year loss”

PARTNERS AND S CORPORATION SHAREHOLDERS

If you have a loss from a prior year that you could not deduct because of at-risk limitations, include these amounts in Part 1 of 6198.

For example, a $1,500 loss from a prior year was limited to $500 because of at-risk rules, include the $1,000 loss from the prior year and the amount from your current year on line 1 of Form 6198

Line 1 - Ordinary income (Loss)

Taxpayers (not partners or S corps) enter income or loss without regard to at-risk limitations

Subtract total deductions (including prior year that were not allowed because of at-risk rules) from total income.

Do not include gains or losses from the sale of assets

Lines 2a, 2b, and 2c Gain (Loss)

Enter long and short term capital gains and losses and ordinary gains and losses from the sale or disposition of assets used in the activity without including amount at-risk limitations.

If there is more than one item, include a statement describing each item

Line 3 - Other Income and Gains from the Activity

Amounts to include on line 3 include any income or gains from Schedule K-1 not include on lines 1 or 2

Line 4 - Other Deductions and Losses From the Activity

Partners or S corporation shareholders include any K-1 losses and deductions not included in lines 1 and 2.

Investment interest expenses: First fill out form 4952 to figure allowable investment interest deductions from the at-risk activity. Line 8 of 4952 should be put on line 4 of 6198 that was limited because of the at risk rules.

Line 5 - Current Year Profit (Loss)

Report all income, gains, deductions and losses from lines 1-4. If you show a profit, you are done with this form. Attach to your return and keep for your records.

If your activity is passive and you show a loss, see form **8582 - Passive Activity Loss Limitation** or **Form 8810 - Corporate Passive Activity Loss and Credit Limitation**s.

Example:

Jill has

a Schedule C loss of $4,600 on line 1

A Schedule D gain of $3,100 on line 2a

Line 5 shows a current year loss of $1,500

Jill deducts

$3,100 of the $4,600 loss on Schedule C

Jill fills our Part II or III on form 6198 and determines

Only $600 of the $1,500 is deductible in the current year

She replaces $4,600 on Schedule C with $3,700 (3,100+ 600) = **The total loss allowed for the year**

PART 11 - SIMPLIFIED COMPUTATION OF AMOUNT AT RISK

Part II can only be used if you know the adjusted basis in the activity, your interest in the partnership, or S corporation's at-risk activity

Part III is the longer method. If you use Part III you do not need to complete Part II

LINE 6 - ADJUSTED BASIS ON THE FIRST DAY OF THE TAX YEAR
https://www.law.cornell.edu/uscode/text/26/1011
The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis

LINE 7 - INCREASES FOR THE TAX YEAR

Include changes that increase your amount at risk such as fair market value (FMV), cash and the adjusted basis of other property contributed to the activity, Loans used to finance the activity, percentage depletion for the year deducted in excess of the adjusted basis

LINE 9 - DECREASES FOR THE TAX YEAR

Do not include deductions or losses shown in lines 1-4

Include changes during the tax year that decrease your amount at risk such as nonrecourse loans, cash, property or borrowed amounts protected against loss, amounts borrowed from a relative or person who has an interest in the activity other than a creditor, withdrawals and distributions during the tax year, nonrecourse liabilities included in line 6 of property contributed to the activity

LINE 10b - AMOUNT AT RISK

If line 10b is smaller than the overall loss, consider completing Part III to see if Part III give you a larger amount at risk

If the amount on 10b is zero you may be subject to recapture rules, Pub 925

PART III - DETAILED COMPUTATION OF AMOUNT AT RISK

If you completed part III in prior years, skip lines 11-14

If the activity began on or after the effective dates (below) and you did not fill out this part in prior years, skip lines 11-14 and put 0 on 15 and complete the rest.

Effective Dates: Generally the first day of the tax year

LINE 11 - INVESTMENT IN THE ACTIVITY AT THE EFFECTIVE DATE

Partners and S corporation shareholders enter the basis of the investment

LINE 12 - INCREASES AT EFFECTIVE DATE

Enter your share of amounts such as

- Net FMV of your own property (not used in the activity) that secures nonrecourse loans used to finance the activity

- Total losses from years before the effective date for which there were equal or greater amounts at risk at the year end using the line 12 worksheet:

LINE 14 - DECREASES AT EFFECTIVE DATE

Enter amounts such as

Nonrecourse loans outstanding used to finance the activity

Cash, property, or borrowed amounts protected against loss

Amounts borrowed from a relative

If you are not an S corporation shareholder, include liens and encumbrances on property your contributed to the activity that are included on line 11

LINE 15 - AMOUNT AT RISK

If you completed Part III for a prior year, check box b and enter the amount from 19b from the prior year (NOT line 10b of the prior year)

Do NOT include any amounts that are NOT at risk

LINE 16 - INCREASES

If you completed Part III of Form 6198 for your prior tax year, check box b and enter on this line any increases described in (1) through (9) below that occurred since the end of your prior tax year.

If you completed Part III of your prior year form, “since effective date” means since the end of your prior tax year.

Enter your share of amounts such as the following.

1. Net FMV of property you own (not used in the activity) that secures nonrecourse loans that were acquired since the effective date and were used to finance the activity, to acquire property used in the activity, or to acquire your interest in the activity. Generally, the net FMV is determined when the property is pledged as security for the loan.

Do not enter the net FMV if (a) the nonrecourse loan was from a person who has an interest in the activity other than as a creditor or who is related under section 465(b)(3)(C) to a person (except you) having such an interest, and (b) the activity is described in (1) through (5) (or (6) for amounts borrowed after May 3, 2004) under *At-Risk Activities* on page 1. However, (a) does not apply to amounts borrowed by a corporation from a person whose only interest in the activity is as a shareholder of the corporation.

2. Cash and the adjusted basis of other property contributed to the activity since the effective date. Adjusted basis is the basis that would be used to figure the loss if the property was sold immediately after you contributed it to the activity.

If you are an S corporation shareholder and you contributed property to the corporation subject to a liability, including a liability you are personally required to repay, then you must reduce the total of the adjusted basis of all the property you contributed by the total of all liabilities the property was subject to. This applies whether the corporation took the property subject to, or assumed, the liabilities.

3. Loans for which you are personally liable that were used to finance the activity, to acquire property used in the activity, or to acquire your interest in the activity and qualified nonrecourse financing (defined on page 1). Do not enter amounts included in (2) above.

4. Total net income from this activity since the effective date (excess of all items of income received or accrued over the allowable deductions). Do not enter any amount less than zero. Do not include the current year income or gains.

If you are not an S corporation shareholder, enter the total net income from the activity since the effective date, taking into account only those years the activity had net income. For years since the effective date that the activity had a net loss, see the instructions for line 18, item (5), on page 7.

If you are an S corporation shareholder, enter your total net income from the activity for profit years since the effective date. Income from the activity includes gain recognized under section 357(c) on contributions of property to the activity. Include all distributions you received from the activity as well as your share of the activity's taxable income.

5. Gain recognized on the transfer or disposition of all or part of the activity or of your interest in the activity since the effective date.

6. Amounts you included in income since the effective date because your amount at risk was less than zero.

7. All money from outside the activity used since the effective date to repay loans included on lines 14 and 18. If, however, you used your own assets to repay a nonrecourse debt and you included an amount in (1) beginning on page 5, the amounts included as repayments cannot exceed the amount by which the balance of the loan at the time of repayment exceeds the net FMV of property you own (not used in the activity) that secures the debt.

8. Percentage depletion deducted in excess of the adjusted basis of the depletable property for the activity since the effective date. Use the Line 16 Worksheet on page 7 to figure this amount. Be sure to include the amount for the current year.

9. If you are an S corporation shareholder, enter the loans you made to your S corporation since the effective date. Do not include notes that you have given to the activity that are still outstanding.

LINE 18 DECREASES

If you completed Part III of Form 6198 for your prior tax year, check box b and enter on this line any decreases described in (1) through (8) below that occurred since the end of your prior tax year.

If you completed Part III of your prior year tax form, “since effective date” means since the end of your prior tax year.

Enter your share of amounts such as the following.

1. Cash, property, or borrowed amounts protected against loss by a guarantee, stop-loss agreement, or other similar arrangement entered into since the effective date. Do not include items covered by casualty insurance or insurance against tort liability. Enter this amount only if it was included on line 16. See the instructions at the beginning of Part III on page 4 for information on effective dates.

2. Amounts borrowed since the effective date from a person who has an interest in the activity other than as a creditor or who is related under section 465(b)(3)(C) to a person (except you) having such an interest. However, this does not apply to (a) amounts borrowed by a corporation from a person whose only interest in the activity is as a shareholder of the corporation, or (b) amounts borrowed after May 3, 2004, and secured by real property used in the activity of holding real property (other than mineral property) that, if nonrecourse, would be qualified nonrecourse financing. Enter these amounts only if they were included on line 16 and not

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included under (1) above. This applies to activities described in (1) through (5) (or (6) for amounts borrowed after May 3, 2004) under *At-Risk Activities* on page 1. See the instructions at the beginning of Part III on page 4 for information on effective dates.

3. Cash and the adjusted basis of other property withdrawn or distributed since the effective date. Adjusted basis is the basis that would be used to figure the loss if the property was sold by the activity at the time you withdrew it or it was distributed to you.

If you are an S corporation shareholder and the property is subject to debt that would be included on line 14 (or on this line except for the fact that there are liens or encumbrances on the property in the activity), reduce the basis of the distributed property by the amount of the debt.

If you are not an S corporation shareholder, reduce the adjusted basis of property withdrawn by the amount, at the time of withdrawal, of any nonrecourse liability to which the property is subject.

Do not include any money from the activity used to repay loans described in the instructions for line 14 on page 5. Include amounts that were withdrawn and recontributed. Recontributed amounts also must be included on line 16.

Partners and S corporation shareholders who recognize gain on distributions from the partnership or S corporation must include the distributions on line 18. They also must take them into account as income from the activity on line 16 unless the gain is recognized in the current year.

4. Recourse loans (and qualified nonrecourse financing) changed to nonrecourse loans since the effective date.

5. Total losses from this activity deducted since the effective date. Take into account only those years in which you had a net loss. Do not include current year losses or deductions. Also, do not include losses or deductions you could not deduct because of the at-risk rules.

Your prior tax year line 21 deductible loss reduces your at-risk investment as of the beginning of your current tax year.

6. Nonrecourse liabilities of property you contributed to the activity since the effective date.

7. Any other at-risk amounts included on line 15 that changed to amounts that are not at risk since

the effective date.

8. If you are an S corporation shareholder, do not include any loans that were assumed by the corporation or that were liens or encumbrances on property you contributed to the corporation since the effective date if the corporation took the property subject to the debt.

Tip - For loans, enter the amount of the loan you incurred, not the current balance of the loan.

LINE 19b AMOUNT AT RISK

If the amount on line 19b is zero, you may be subject to the recapture rules referenced in IRS Publication 925.

Part IV—Deductible Loss

Line 21 deductible loss

If the loss on line 5 is equal to or less than the amount on line 20, report the items in Part I in full on your return, subject to any other limitations such as the passive activity and capital loss limitations. Follow the instructions for your tax return.

If the loss on line 5 is more than the amount on line 20, you must limit your deductible loss to the amount on line 20, subject to any other limitations.

Examples

(a) If line 5 is a loss of $400 and line 20 is $1,000, enter ($400) on line 21. (b) If line 5 is a loss of $1,600 and line 20 is $1,200, enter ($1,200) on line 21. (c) If line 5 is a loss of $800 and line 20 is zero, enter -0- on line 21.

When comparing lines 5 and 20, treat the loss on line 5 as a positive number only for purposes of determining the amount to enter on line 21.

If the amount on line 21 is made up of only one deduction or loss item, report on your return the amount shown on line 21, subject to any other limitations. Follow the instructions for your tax return to determine where to report the amount on your return.

If the amount on line 21 is made up of more than one deduction or loss item in Part I (such as a Schedule C loss and a Schedule D loss), a portion of each such deduction or loss item is allowed (subject to other limitations) for the year. Determine this portion by multiplying the loss on line 21 by a fraction. Figure the fraction by dividing each item of deduction or loss from the activity by the total loss from the activity on line 5. The remaining portion of each deduction or loss item from the activity is disallowed and must be carried over to next year.