



TaxNewsFlash

United States

No. 2017-445
October 13, 2017

IRS nonacquiescence: Material participation in real estate activities under section 469

Action on Decision (AOD) 2017-07—appearing in the Internal Revenue Bulletin 2017-42 (dated October 16, 2017)—states that the IRS Commissioner does not acquiesce to a 2015 decision of a federal district court that addressed issues under the passive activity rules of section 469.

In *Stanley v. United States*, No. 5:14-CV-05236 (W.D. Ark. 2015), the federal district court granted summary judgment for the taxpayers in their tax refund suit. At issue were questions about the taxpayer/husband's material participation in real estate activities, and whether all work engaged in by him for the benefit of a property-management company would be counted toward determining whether he materially participated in his rental real estate activity.

AOD 2017-07 appears in [IRB 2017-42](#) [PDF 211 KB] and explains that the nonacquiescence relates to the holdings that:

- Mere possession of a stock certificate—disregarding other conditions, restrictions or limitations on the possessor's rights regarding the stock—constitutes ownership for purposes of section 469(c)(7)(D)(ii)
- Work performed by the taxpayer in a rental real estate activity for purposes of section 469(c)(7)(A) may also constitute work performed by the taxpayer in non-rental business activities of the taxpayer for other purposes of section 469

The information contained in TaxNewsFlash is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230, as the content of this document is issued for general informational purposes only, is intended to enhance the reader's knowledge on the matters addressed therein, and is not intended to be applied to any specific reader's particular set of facts. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

KPMG International is a Swiss cooperative that serves as a coordinating entity for a network of independent member firms. KPMG International provides no audit or other client services. Such services are provided solely by member firms in their respective geographic areas. KPMG International and its member firms are legally distinct and separate entities. They are not and nothing contained herein shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners, or joint venturers. No member firm has any authority (actual, apparent, implied or otherwise) to obligate or bind KPMG International or any member firm in any manner whatsoever.

Direct comments, including requests for subscriptions, to [Washington National Tax](#). For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at + 1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.

To unsubscribe from TaxNewsFlash-United States, reply to [Washington National Tax](#).

[Privacy](#) | [Legal](#)