

ADVANCED TAX STRATEGY GUIDE

# The **Short-Term Rental Tax** Loop-hole

How to Offset Your W-2 Income With Airbnb Losses —  
Without REPS

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**Who is this guide for?** W-2 earners who want to use short-term rental properties (Airbnb, VRBO) to legally offset their salary income — even without qualifying for Real Estate Professional Status.

## CHAPTER 1

# What is the STR Loophole?

The IRS rule that lets short-term rental owners offset their W-2 income — without REPS.

### The Problem Most Investors Face

Under the standard passive activity rules (IRC Section 469), rental real estate losses are classified as **passive**. That means they can only offset other passive income — not your salary, bonuses, or W-2 income. For high-income earners, this makes rental property depreciation largely useless until you sell.

There are two well-known exceptions: the **\$25,000 active participation allowance** (which phases out above \$150K of adjusted gross income) and **Real Estate Professional Status (REPS)**. But REPS requires 750+ hours and more than half your working time in real estate — difficult for anyone with a full-time career.

### The Exception Nobody Talks About

There's a third path — and it's the one that changes everything for Airbnb and VRBO owners.

Under **Treasury Regulation §1.469-1T(e)(3)(ii)(A)**, a rental activity is **NOT treated as a rental activity** if the average period of customer use is **7 days or less**. Read that again — the IRS says your short-term rental is **not a rental activity** under the passive activity rules.

### What This Means

If your average guest stay is 7 days or less AND you materially participate in the activity:

Your STR is treated as a **non-passive business activity**

Losses (including depreciation) can offset **ANY income** — including your W-2

You do **NOT** need REPS to use this strategy

## No REPS Required.

This is the STR loophole.

**Why "loophole" is the wrong word:** This isn't a gray area or aggressive tax position. It's a clearly defined exception in the Treasury Regulations. The IRS intentionally excluded short-term rentals from the passive activity rules because they involve significantly more active management than long-term rentals.

## CHAPTER 2

# Why This is **NOT** Passive Income

Understanding why the IRS treats short-term rentals differently from long-term rentals.

### The Logic Behind the Rule

The passive activity rules were created by Congress in 1986 (Tax Reform Act) to prevent taxpayers from using "paper losses" from investments they didn't actively manage to shelter their employment income. The target: wealthy individuals buying into tax shelter partnerships and doing nothing.

Long-term rentals fit this profile — you can hire a property manager and be completely hands-off. That's why rental activities are presumed passive.

But short-term rentals are fundamentally different:

#### Long-Term Rental (Passive)

- Lease signed for 12 months
- Minimal ongoing interaction
- Property manager handles everything
- Owner involvement: minimal

#### Short-Term Rental (Non-Passive)

- Guests cycle every 2-5 days
- Constant communication required
- Cleaning, restocking, pricing daily
- Owner involvement: hotel-like

### The IRC Section 469 Framework

Here's how the rules stack up for different real estate activities:

ACTIVITY TYPE	DEFAULT CLASSIFICATION	CAN OFFSET W-2?	REQUIREMENTS
Long-term rental	Passive	Only with REPS	750+ hrs, >50% of working time
Long-term rental (active)	Passive (limited exception)	Up to \$25K (phases out >\$150K AGI)	Active participation
<b>Short-term rental (≤7 days avg)</b>	<b>Non-passive business</b>	<b>YES — unlimited</b>	<b>Material participation</b>
STR with REPS	Non-passive (both paths)	<b>YES — unlimited</b>	Either path works

**The key takeaway:** Short-term rentals with ≤7-day average stays are treated like any other **active business** — not like rental real estate. This is the critical distinction that makes the STR loophole work.

## CHAPTER 3

# The 7-Day Average Stay Rule

How the IRS calculates average stay — and how to make sure you qualify.

### How It's Calculated

The "7-day rule" looks at the **weighted average** period of customer use for the tax year. The formula is simple:

Average Stay =

**Total Guest-Nights ÷ Total Number of Stays**

Must be ≤ 7.0 days to qualify

### Example Calculation

BOOKING	GUEST	NIGHTS
Jan 5–8	Smith Family	3
Jan 15–19	Johnson	4
Feb 1–3	Williams	2
Feb 14–20	Davis	6
Mar 1–8	Brown Family	7
Mar 15–22	Garcia (extended)	7
<b>Total</b>	<b>6 stays</b>	<b>29 nights</b>

**Average stay:** 29 nights ÷ 6 stays = **4.8 days** → Qualifies ✓

### What Qualifies

- ✓ **Airbnb, VRBO, Booking.com properties** — most vacation rentals average 3-5 nights
- ✓ **Furnished short-term housing** — corporate housing booked nightly or weekly (keep average ≤7)
- ✓ **Properties near tourist destinations** — theme parks, beaches, ski resorts, national parks
- ✓ **Urban properties in high-demand areas** — weekend getaway markets

### Watch Out: What Could Push You Over 7 Days

- ✗ **Extended stay bookings** — one 30-day booking can dramatically raise your average
- ✗ **Monthly "snowbird" renters** — mixing long-term winter guests with short stays can disqualify you
- ✗ **Insurance relocation stays** — displaced families staying 30-60 days after disasters

**Pro Tip:** Set minimum and maximum stay limits on your booking platforms. A 1-night minimum and 14-night maximum keeps your average well under 7 days. Monitor your rolling average throughout the year — don't wait until tax time to discover you've exceeded the threshold.

## CHAPTER 4

# Material Participation Tests

Meeting the 7-day rule gets you in the door. Material participation gets you the deduction.

### Why Material Participation Matters

The 7-day rule reclassifies your STR from a "rental activity" to a "business activity." But to deduct losses against your W-2, you still need to **materially participate** in that business. Without material participation, the activity is still treated as passive.

### The 7 Tests (You Only Need to Pass ONE)

The IRS provides 7 tests for material participation under Reg. §1.469-5T. For STR owners, two are most commonly used:

#### Test #1: The 100-Hour + More Than Anyone Else Test

You participate for **more than 100 hours** during the year, AND your participation is **more than any other individual** (including employees, contractors, and property managers).

This is the test most STR owners use. It's achievable even with a full-time W-2 job.

#### Test #2: The 500-Hour Test

You participate for **more than 500 hours** during the year. Period.

If you hit 500 hours, you materially participate regardless of anyone else's involvement.

### Breaking Down the 100-Hour Test

100 hours per year is very achievable:

TIMEFRAME	HOURS NEEDED	EFFORT LEVEL
Per year	100+ hours	—
Per month	~8.5 hours	~2 hours/week
<b>Per week</b>	<b>~2 hours</b>	<b>Very achievable</b>

### The "More Than Anyone Else" Requirement

This is where it gets nuanced. If you hire a cleaning crew that spends 150 hours/year at your property, and you only spend 120 hours — you still pass, because the cleaning crew is a contractor (their hours typically count as a group, not individually). The test compares YOUR hours to any **single individual's** hours.

**Key Strategy:** If you use a property manager, make sure YOUR individual hours exceed the property manager's individual hours. Using multiple contractors (different cleaners, different handymen) instead of one person doing everything helps ensure no single individual's hours exceed yours.

## CHAPTER 5

# How STR Losses Offset W-2 Income

The step-by-step mechanics of turning your Airbnb into a tax reduction machine.

### Step-by-Step: How It Works

- 1 Buy an STR property.** You purchase a vacation rental — let's say for \$750,000 near a popular tourist destination.
- 2 Operate it as a short-term rental.** List on Airbnb, VRBO, direct booking. Average stay: 3-5 nights. The 7-day rule is satisfied.
- 3 Materially participate.** Spend 100+ hours managing the property — guest communication, pricing, maintenance coordination, cleaning oversight. More hours than any single other individual.
- 4 Perform a cost segregation study.** An engineer reclassifies building components into shorter depreciation lives. \$750K property → \$200K+ in Year 1 accelerated depreciation.
- 5 Generate a "tax loss."** Your property brings in \$60K in rental income but has \$80K in operating expenses + \$200K in depreciation = net loss of \$220K. (You're cash-flow positive but have a "paper loss.")
- 6 Deduct against your W-2.** Because the activity is non-passive (7-day rule + material participation), the \$220K loss offsets your W-2 income directly on your tax return.

### The Math

Your W-2 income: \$400,000

STR net loss (after depreciation): (\$220,000)

Adjusted taxable income: \$180,000

Tax savings (37% marginal rate):

**\$81,400**

Your property is cash-flow positive AND saving you \$81K in taxes.

### Understanding "Paper Losses"

This is the part that confuses most people. Your STR is **making money** — guests are paying, you're collecting rent, your bank account is growing. But on paper, depreciation creates a "loss" because the IRS lets you deduct the theoretical decline in your building's value.

In reality, your property is likely **appreciating**. You're getting:

- ✓ **Cash flow** from rental income
- ✓ **Appreciation** as the property increases in value
- ✓ **Tax savings** from depreciation deductions against your W-2
- ✓ **Equity buildup** as guests pay down your mortgage

**This is the triple benefit of real estate:** cash flow + appreciation + tax savings. The STR loophole supercharges the tax savings component by letting you use depreciation against your active income — without REPS.

## CHAPTER 6

# Cost Segregation on STR Properties

Accelerating depreciation for maximum Year 1 deductions.

### Why Cost Seg is Critical for STRs

Without cost segregation, a \$750K property (with ~\$600K in depreciable building value) gives you about **\$21,800 per year** in straight-line depreciation. Helpful, but not transformative.

With cost segregation, that same property can generate **\$150,000–\$250,000+ in Year 1 depreciation** — and when combined with the STR loophole, every dollar of that deduction offsets your W-2 income.

### What Gets Reclassified

COMPONENT	NORMAL LIFE	AFTER COST SEG	STR-SPECIFIC EXAMPLES
Personal property (5-year)	27.5 years	5 years	Furniture, appliances, decor, linens, smart locks, TVs
Personal property (7-year)	27.5 years	7 years	Office equipment, specialty fixtures
Land improvements (15-year)	27.5 years	15 years	Landscaping, pool, fencing, driveway, outdoor kitchen
<b>With bonus depreciation</b>	—	<b>Year 1</b>	<b>All of the above — front-loaded into year of purchase</b>

## STR Properties are Cost Seg Gold Mines

Short-term rentals typically have **more depreciable personal property** than long-term rentals because they're fully furnished:

- ✓ Complete furniture packages (beds, sofas, dining sets, desks)
- ✓ Full kitchen equipment (appliances, cookware, dishes)
- ✓ Entertainment systems (TVs, gaming consoles, sound bars)
- ✓ Themed decor and specialty design elements
- ✓ Smart home technology (locks, thermostats, cameras, Wi-Fi systems)
- ✓ Outdoor amenities (hot tubs, pool equipment, patio furniture, grills)
- ✓ Linens, towels, and consumable supplies

A typical STR cost segregation study reclassifies **25-40%** of the property's depreciable basis into shorter-lived categories — significantly more than a typical long-term unfurnished rental.

### Real Numbers: \$750K STR Purchase

Depreciable basis: ~\$600K (excluding land)

Cost seg reclassification: ~35% (\$210K) moved to 5/7/15-year lives

With 100% bonus depreciation (permanently restored in 2025): Front-load the full \$210K into Year 1

+ Remaining straight-line: ~\$14K/year on the balance

**Cost of a study:** \$3,000–\$8,000 depending on property size and complexity. For a property generating \$100K+ in tax savings, the ROI is 10x–30x. Every serious STR investor should get one.

### Turn your tax bill into your next investment.

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## CHAPTER 7

# STR + REPS: The Ultimate Combo

When you qualify for both, the tax benefits are maximized — with redundant protection.

### Why Both?

The STR loophole works on its own — you don't need REPS. But if your household **also** qualifies for REPS, you get two major advantages:

**1 Belt AND suspenders:** Two independent legal bases for treating losses as non-passive. If the IRS challenges one, the other still holds.

**2 Long-term rental benefits too:** REPS makes ALL your rental activities non-passive — including long-term rentals that don't qualify for the STR loophole. Your entire portfolio becomes a tax weapon.

**3 Maximum flexibility:** If a property's average stay drifts above 7 days one year (maybe you took a 30-day booking), REPS still covers you.

**4 Grouping power:** REPS allows you to aggregate all rental activities and apply depreciation across your entire portfolio against W-2 income.

## When the Combo Makes Sense

✓ **Spouse manages STR properties:** Already logging 750+ hours on Airbnb management? That likely qualifies for REPS too.

✓ **Mixed portfolio:** You own both STRs and long-term rentals. STR loophole covers the short-term properties; REPS covers everything.

✓ **Risk mitigation:** You want maximum audit protection. Having two independent justifications for non-passive treatment is the strongest position.

### The Power Portfolio

Imagine this: 2 STR properties (qualify via the loophole) + 2 long-term rentals (qualify via REPS) + cost segregation on all four.

**Total Year 1 depreciation: \$400K–\$600K+**

**Against household W-2 income: \$500K**

## Near-Zero Tax Bill

Legally. With real, appreciating assets generating cash flow.

**Bottom line:** The STR loophole is powerful on its own. REPS is powerful on its own. Together, they create an almost unbeatable tax position for high-income households. If your household can qualify for both, do it.

## CHAPTER 8

# Tracking Your Hours

What counts, what doesn't, and how to document everything for audit protection.

### Activities That Count Toward Material Participation

- ✓ **Guest communication:** Responding to inquiries, answering questions, sending check-in/check-out instructions, handling complaints, writing reviews

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- ✓ **Cleaning coordination:** Scheduling turnovers, inspecting clean quality, managing cleaning supply inventory, communicating with cleaning teams

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- ✓ **Pricing management:** Adjusting nightly rates, monitoring competitors, setting seasonal pricing, managing dynamic pricing strategies

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- ✓ **Marketing:** Updating listings, taking/editing photos, writing descriptions, managing social media for your property, responding to reviews

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- ✓ **Maintenance:** Coordinating repairs, scheduling preventive maintenance, ordering supplies, inspecting property condition, supervising contractors

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- ✓ **Check-ins & check-outs:** Self-check-in system management, lockbox code updates, smart lock programming, greeting guests (if in person)

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- ✓ **Bookkeeping:** Recording income/expenses, categorizing transactions, preparing for tax filing, managing security deposits, tracking occupancy metrics

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- ✓ **Property improvements:** Planning upgrades, shopping for furnishings/decor, installing new amenities, researching design trends

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- ✓ **Travel to/from property:** Drive time for inspections, restocking, guest issue resolution

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- ✓ **Education:** STR-specific courses, podcasts, conferences, host community participation

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## How to Document

### WealthStrategy.ai — Your All-in-One STR Tracker

Everything you need to prove material participation — in one platform:

FEATURE	WHAT IT DOES
<b>AI-Assisted Logging</b>	Describe your day in plain English — AI categorizes and logs your hours automatically
Phone Call Import	Import your call log — AI identifies RE-related calls and counts the time toward your hours
<b>Per-Property Tracking</b>	Track hours per STR property with 100-hour progress bars and material participation test status
7-Day Average Monitor	Real-time tracking of your average guest stay length with alerts if it approaches 7 days
<b>Mileage Tracking</b>	Log drives to properties with automatic mileage calculation and purpose classification
Property Financials	Income, expenses, depreciation tracking, and cost seg projections per property
<b>Audit-Ready Reports</b>	Generate CPA-ready PDFs with category breakdowns, monthly summaries, and IRS activity mapping
Corroborating Evidence	Attach emails, photos, receipts, and notes to each log entry for audit protection

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**The Daily Habit:** Spend 2 minutes at the end of each day logging what you did in WealthStrategy's tracker. This single habit is the difference between winning and losing an audit. Reconstruction after the fact is the #1 reason material participation claims fail in Tax Court.

## CHAPTER 9

# Real-World Example: A Physician's Airbnb

How Dr. Patel generated \$80K in tax savings with one short-term rental property.

### The Setup

**Dr. Anil Patel** — Orthopedic surgeon, W-2 income: \$520,000. Works 50+ hours/week at the hospital. Cannot qualify for REPS.

**The property:** 4-bedroom vacation home in Kissimmee, FL (near Disney World). Purchase price: \$650,000. Fully furnished and themed for families.

### Year 1 Operations

METRIC	VALUE
Total bookings	68 stays
Total guest-nights	285 nights
Average stay	<b>4.2 days</b> (qualifies ✓)
Gross rental income	\$72,000
Operating expenses (cleaning, supplies, management, insurance, etc.)	(\$38,000)
Mortgage interest	(\$28,000)
<b>Net cash flow (before depreciation)</b>	<b>\$6,000 positive</b>

### Dr. Patel's Material Participation (127 Hours)

ACTIVITY	ANNUAL HOURS
Guest communication (pre/during/post stay)	35
Pricing management & listing optimization	24
Cleaning coordination & quality checks	18
Maintenance coordination & vendor management	15
Bookkeeping & financial tracking	12
Property visits & inspections (4 trips/year)	14
Marketing, photography, listing updates	9
<b>Total</b>	<b>127 hours</b>

**Cleaning company's hours:** 95 hours (no single cleaner exceeded 50 hours individually). Dr. Patel's 127 hours > any single individual ✓

## The Tax Impact

### Cost Segregation Results

Depreciable basis: \$520K | Cost seg reclassified: \$195K to 5/7/15-year lives

**Year 1 accelerated depreciation: \$182,000**

+ Operating loss (after expenses): (\$38,000 - \$72,000 + \$28,000 interest) = cash flow positive, but after depreciation:

**Net tax loss: \$216,000**

Dr. Patel's W-2 income: \$520,000 → Adjusted: \$304,000

**\$80,000+**

in federal tax savings. Property is cash-flow positive. No REPS required.

## CHAPTER 10

# Year-by-Year Tax Impact

A 5-year projection showing cumulative savings from a single STR property.

Continuing Dr. Patel's example — one STR property, cost-segregated, with consistent material participation each year:

YEAR	W-2 INCOME	STR CASH FLOW	DEPRECIATION	NET TAX LOSS	TAX SAVINGS
Year 1	\$520,000	\$6,000	(\$182,000)	(\$216,000)	\$80,000
Year 2	\$535,000	\$9,000	(\$28,000)	(\$47,000)	\$17,400
Year 3	\$550,000	\$12,000	(\$24,000)	(\$40,000)	\$14,800
Year 4	\$565,000	\$14,000	(\$21,000)	(\$35,000)	\$13,000
Year 5	\$580,000	\$16,000	(\$19,000)	(\$31,000)	\$11,500
<b>5-Year Total</b>	—	<b>\$57,000</b>	<b>(\$274,000)</b>	—	<b>\$136,700</b>

**Note:** Year 1 captures the largest savings due to cost segregation front-loading. Years 2-5 still provide meaningful ongoing deductions from remaining straight-line depreciation. Cash flow improves each year as the property matures and rates increase.

## The Reinvestment Strategy

Smart investors use Year 1 tax savings to fund additional STR acquisitions:

- 1** **Year 1:** Buy STR #1 → cost seg → save \$80K in taxes
- 2** **Year 2:** Use \$80K tax savings as down payment on STR #2 → new cost seg → another \$70K–\$90K Year 1 deduction on Property #2
- 3** **Year 3:** Two properties generating cash flow + tax savings → fund STR #3
- 4** **Year 5:** Portfolio of 3-4 STR properties generating \$50K+ in annual cash flow AND \$40K–\$80K+ in annual tax savings

### 5-Year Portfolio Projection (Reinvesting)

Starting with one property and reinvesting tax savings:

**Properties owned by Year 5:** 3-4

**Annual cash flow:** \$50,000–\$70,000

**Cumulative tax savings:** \$250,000+

**Portfolio equity:** \$500,000+ (with appreciation)

### What's YOUR number?

Our AI calculates your potential STR tax savings in 90 seconds. Free tax checkup — see three paths to lower taxes based on YOUR income and properties.

**[Run Your Free Tax Checkup → wealthstrategy.ai](https://wealthstrategy.ai)**

## CHAPTER 11

# State-Specific Considerations

Not all states treat STR income and deductions the same way.

## STR-Friendly States

### ✓ FLORIDA

No state income tax. STR-friendly regulations in most counties. Tourist-destination properties perform exceptionally well. Kissimmee, Orlando, Destin, and Panama City Beach are top markets.

### ✓ TEXAS

No state income tax. Strong property rights. Austin, San Antonio, and Gulf Coast markets support robust STR operations.

### ✓ TENNESSEE

No state income tax on earned income. Nashville, Gatlinburg/Pigeon Forge, and Memphis are thriving STR markets. Smoky Mountains is the #1 STR market in America.

### ✓ ARIZONA

STR-friendly state preemption law. Strong Scottsdale, Phoenix, and Sedona markets. State law limits municipalities from banning STRs.

## States With Restrictions

### ⚠ CALIFORNIA

Does NOT conform to federal passive activity rules. State-level treatment may differ. Many cities have strict STR permit requirements, caps, and primary residence requirements.

### ⚠ NEW YORK

NYC effectively banned most STRs under 30 days (Local Law 18, 2023). Upstate NY is more permissive but varies by municipality. State tax treatment follows federal for passive activity rules.

### ⚠ HAWAII

Heavy STR regulations on many islands. Permits required, many areas restricted to resort zones only. High demand but significant regulatory burden.

### ⚠ COLORADO

Varies heavily by municipality. Denver has a primary residence requirement. Mountain towns like Breckenridge and Aspen have caps and permit systems. Summit County has specific STR caps.

**Key Advice:** Research your target market's STR regulations BEFORE purchasing. Check: (1) Is an STR permit required? (2) Are there caps on STR licenses in the area? (3) Is there a primary residence requirement? (4) What are the local tax/TOT requirements? (5) Does your state conform to federal passive activity rules?

## CHAPTER 12

# Risk Factors & Regulatory Changes

Every strategy has risks. Here's what to watch for and how to protect yourself.

### Tax Law Changes

- ✗ **Bonus depreciation restored to 100%:** As of 2025, 100% bonus depreciation has been permanently restored under the "Big Beautiful Bill." This is a massive win — you can deduct the full cost of accelerable components in Year 1. No more phase-down concerns.
- ✗ **Potential legislative targeting:** The STR loophole has gained attention. Future tax reform could modify the 7-day exception, though this has been stable since 1986.
- ✗ **Cost segregation lookback:** If you sell within the cost segregation depreciation window, you may face depreciation recapture taxed at up to 25%. Plan your exit strategy.

### Regulatory & Market Risks

- ✗ **Local STR bans or restrictions:** Municipalities are increasingly regulating STRs. A new ordinance could force conversion to long-term rental (losing the 7-day qualification).
- ✗ **HOA rule changes:** HOAs can vote to restrict or ban STRs. Review CC&Rs carefully before purchasing in HOA communities.
- ✗ **Market saturation:** Some STR markets are becoming oversaturated, putting downward pressure on nightly rates and occupancy.
- ✗ **Interest rate impact:** Higher rates increase carrying costs and reduce your cash flow cushion.

### Operational Risks

- ✗ **Average stay drift:** If your average stay creeps above 7 days, you lose the STR loophole for that year. Monitor continuously.
- ✗ **Material participation failure:** If you stop actively managing and delegate entirely to a property manager, you may fail material participation.
- ✗ **Inadequate documentation:** Poor record-keeping is the #1 reason tax positions fail in audit. Log hours daily.

## Risk Mitigation Strategies

- ✓ **Diversify markets:** Don't put all STRs in one city. Spread across multiple municipalities to reduce regulatory risk.
- ✓ **Monitor legislation:** Stay current on both federal tax law changes and local STR ordinances.
- ✓ **Maintain REPS as backup:** If your household qualifies for REPS, maintain it as a redundant path to non-passive treatment.
- ✓ **Set booking limits:** Cap maximum stay at 14 days or less to protect your 7-day average.
- ✓ **Build a team:** CPA who specializes in STR tax strategy, real estate attorney, insurance broker familiar with STR exposure.
- ✓ **Hold long-term:** Depreciation recapture is triggered at sale. Holding properties long-term and refinancing to access equity avoids the taxable event.

⚠ **Important:** This strategy is powerful but requires ongoing attention. It's not "set it and forget it." You must materially participate every year, maintain your average stay, and keep meticulous records. The reward is substantial — but so is the responsibility.

## CHAPTER 13

# Frequently Asked Questions

The 10 most common questions about the short-term rental tax loophole.

### **Q1: Do I need to personally clean the property to materially participate?**

No. You don't need to do the physical cleaning yourself. Coordinating cleaners, inspecting their work, managing scheduling, and handling supply purchases all count as material participation hours. What matters is that YOU are actively involved in the management — not that you're scrubbing toilets.

### **Q2: Can I use a property management company and still qualify?**

Yes, but carefully. Your individual hours must exceed the property manager's individual hours. If the PM dedicates one person full-time (1,500+ hours), it's nearly impossible. A part-time PM, or a PM company where multiple people share duties (no single person exceeding your hours), is the way to go.

### **Q3: What if I get one 30-day booking? Does that ruin everything?**

Not necessarily — it depends on your total bookings for the year. If you have 50 other stays averaging 3 nights, one 30-day booking raises your average but may not push you over 7 days. Do the math:  $(150 + 30) \div 51 = 3.5$  days — still fine. But two or three long stays could be problematic. Monitor your rolling average.

### **Q4: Does this work for a property I also use personally?**

Personal use days are excluded from the average stay calculation, but excessive personal use can create other tax complications (IRC §280A limits deductions when personal use exceeds 14 days or 10% of rental days). Keep personal use minimal and well-documented.

### **Q5: I live in a high-tax state (CA, NY, NJ). Does this help with state taxes too?**

It depends on whether your state conforms to federal passive activity rules. Many states do, meaning the STR loophole works at the state level too. California is a notable exception — it has its own passive activity rules. Consult a CPA who knows your state's specific treatment.

## **CHAPTER 13 (CONTINUED)**

# **FAQ Continued**

### **Q6: Can I use the STR loophole with a property I already own as a long-term rental?**

Yes! Convert it from a long-term rental to a short-term rental. Once your average stay drops to 7 days or less and you materially participate, the loophole applies. You can also do a "look-back" cost segregation study on a property you've owned for years — catching up on missed accelerated depreciation.

### Q7: Is the STR loophole the same as the "Airbnb loophole" I hear about?

Yes — different names for the same strategy. "Airbnb loophole," "STR loophole," "short-term rental exception," and "7-day rule" all refer to Treas. Reg. §1.469-1T(e)(3)(ii)(A), which excludes rentals with average customer use of 7 days or less from the passive activity rental rules.

### Q8: What if my spouse manages the STR — can I claim the deduction on our joint return?

Yes. If either spouse materially participates in the STR activity, the non-passive treatment flows through to the joint return. Either spouse's participation counts — unlike REPS, where only the qualifying spouse's hours matter for the 750-hour/more-than-half tests.

### Q9: How many STR properties can I use this strategy with?

There's no limit on the number of properties. However, you need to materially participate in EACH property separately (or group them together if appropriate). The more properties you have, the more hours you need to log. Plan accordingly.

### Q10: What happens when I sell the STR property?

You'll face depreciation recapture — the IRS "recaptures" the depreciation you took at a rate of up to 25% (unrecaptured Section 1250 gain). If you took \$200K in depreciation, you could owe up to \$50K in recapture tax at sale. Strategies to manage this: (1) 1031 exchange into another property, (2) hold indefinitely and refinance to access equity, (3) hold until death (heirs get stepped-up basis, wiping out recapture).

**The big picture:** The STR loophole is one of the most powerful tax strategies available to W-2 earners. It requires active involvement, good record-keeping, and strategic property selection — but the payoff is enormous. \$50K–\$100K+ in annual tax savings, cash-flowing assets, and a portfolio that builds generational wealth.

## LET'S CONNECT

# Connect With Michael

Ready to take control of your tax strategy? I'd love to hear from you.

## Ready to Take the Next Step?

I help high-income earners understand and implement these strategies. Whether you're exploring the STR loophole, looking at investment opportunities, or just want to connect — reach out.

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Tax strategy, real estate investing, and wealth building — for pilots, physicians, and high-income professionals. Listen on [Apple Podcasts](#).

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Michael DiChiaro is not a CPA, tax attorney, or registered investment advisor.

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