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**Ken Berry, JD** • May. 17, 2017

If you rent out a residence such as a summer vacation home when you're not using it, you may be entitled to deduct expenses against the rental income. In fact, you can even claim an annual loss if you don't exceed certain limits. But the number of "business days" of use versus "personal days" is critical.

Significantly, a day spent repairing the place or making improvements doesn't count as a personal day if you have the records to back up your claims. But a taxpayer in a new case failed to convince the Tax Court he met the requirements for rental of a home previously owned by NBA great Larry Bird (Cooke TC Memo 2017-74).

First, let's quickly review the key tax rules for rentals of vacation homes and comparable properties. Although the income realized from a vacation home rental is generally taxable, you can offset the tax liability with deductions for rental expenses, including mortgage interest, property taxes, insurance, repairs, utilities and depreciation. This can significantly reduce the tax you might owe from the summer rental season.

However, you can't claim a tax loss if your personal use exceeds the greater of 14 days or 10 percent of the number of days the home is rented out. In other words, you must allocate the time spent at the home between business days and personal days. For instance, if you take a family vacation at the home the last three weeks of the summer, you'll run afoul of the personal use limits, regardless of the number of days the place is rented out.

But you can stay within the limits with a relatively small scheduling change. Therefore, if you spend the last week of the summer "winterizing" the home for next year, only the first two weeks of the vacation count as personal days. Alternatively,

you might take one week in May to prepare the home for summer rentals and spend

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During the tax years in question, the taxpayer offered the property for resale. Although he received several inquiries about rentals, he declined to do so because of concerns about liability and his opinion that the rental income would not justify the expenses. Caretakers were hired to live on the property and do any necessary maintenance work.

The record shows that that taxpayer took several trips to the Indiana property for at least part of each of 26 days in 2010 and 33 days in 2011. He testified that he spent numerous hours on “business activities” during the trips to the Indiana property. To prove his point, the taxpayer relied on daily logbooks created during the IRS’ examination.

Based on the logbooks, the taxpayer contended that he “engaged substantially full time in maintenance and repair activities during every day” spent at the property in 2010 and all days except for possibly two in 2011. He also argued that that the days spent traveling from and back to Anchorage should not count personal days at the Indiana property because the principal purpose of each trip was to perform repairs and maintenance.

However, the Tax Court disagreed with the taxpayer. Based on his testimony and logbooks, there was no evidence of disrepair to the property, nor were there any specific details on what was done to improve it. In addition, the Court noted that caretakers lived at the property and were supposed to perform maintenance duties. The taxpayer also testified he reconstructed the logbooks from his accounting records. Accordingly, the Tax Court determined that the days claimed as business days were personal days and disallowed the losses.

If your clients are in a similar situation, don’t go into an IRS examination or a court proceeding unprepared. Make sure that claims for business days spent on repairs and

maintenance are documented and can be supported by evidence, including receipts

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