

Tests for Material Participation

The IRS has offered four tests for determining whether the material participation test has been satisfied. A landlord is materially participating if he/she meets one of the following tests.

1. The first test requires the landlord to satisfy any three of the following:
 - advance, pay, or stand good for at least half of the direct costs of producing the crop;
 - furnish half of the tools, equipment and livestock used in producing the crop;
 - advise and consult with the tenant periodically; or
 - inspect production activities periodically.
2. The second test requires the landlord to regularly make, or take an important part in making, management decisions substantially contributing to the success of the enterprise. Under this test, it appears that decisions should be made throughout the year, such as when to plant, cultivate, dust, spray, or harvest; what items to buy, sell or rent; what records to keep; what reports to make; and what bills to pay and when. Establishing a lease arrangement at the beginning of the season probably will not be regarded as making management decisions.

3. The third test requires the landlord to work 100 hours or more over a period of five weeks or more in activities connected with producing the crop.
4. The fourth test requires the landlord to do things which, in total effect, show that the landlord is materially and significantly involved in the production of farm commodities. This test is the catchall that a landlord can attempt to utilize if the landlord wants to show material participation but is not able to satisfy any of the first three tests. The litigated cases on the material participation issue have arisen primarily from this catchall provision.

One additional note-agricultural program payments that are received under a crop-share or livestock-share lease are considered to be self-employment income for Social Security purposes if the landlord materially participates under the lease.

... and justice for all

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Issued in furtherance of Cooperative Extension work, Acts of May 8 and July 30, 1914, in cooperation with the U.S. Department of Agriculture. Cathann A. Kress, director, Cooperative Extension Service, Iowa State University of Science and Technology, Ames, Iowa.
