

A CPA couple explains the 'marital loophole' that real estate investors are using to save big on taxes — and other overlooked strategies

Story by kelkins@businessinsider.com (Kathleen Elkins) 9-5-25

- CPAs Amanda Han and Matthew MacFarland highlight major tax benefits for real estate investors.
- If you qualify for REPS, you can use losses from real estate activity to shelter W-2 income.
- The short-term rental loophole also allows you to reduce your taxable income using real estate.

Owning rental properties offers tax benefits.

That's "no surprise," CPA Amanda Han told Business Insider. "I think what generally happens is people just don't know how to *utilize* these benefits."

Han and her husband, Matthew MacFarland, run [Keystone CPA](#), a firm that specializes in tax-saving strategies for real estate investors. The CPA couple also [invests in property](#) outside of their day jobs.

They flagged one lesser-known tax strategy that is particularly advantageous for property investors. It allows qualifying individuals to shelter their W-2 income by using an IRS designation known as "real estate professional status," or REPS.

Typically, rental real estate losses are considered passive and can only offset passive income. For example, if you're working as an accountant and invest in real estate on the side, then the losses from your real estate business offset your rental income — but you can't take that loss and offset your accounting income. That's because they're two unrelated activities.

However, if you're considered a real estate professional, it all becomes one big activity, and you can deduct rental losses against active forms of income, including W-2 and 1099 earnings.

Note the \$25,000 "special allowance," said Han: "If your income is under \$100,000 and you invest in long-term rentals, you can actually use up to \$25,000 of losses against W-2 income."

The allowance is partial if you make between \$100,000 and \$150,000, and it's completely phased out when your modified adjusted gross income reaches \$150,000.

That means, if you're making over \$150,000 and you're trying to use real estate to offset W-2 income, "either you have to be a real estate professional or you have to be married to a spouse who's a real estate professional," explained Han.

She continued: "It's what we call 'the marriage loophole.' You could continue to have your high W-2 income — as long as your spouse is a real estate professional, then the rental losses can offset both of your incomes."

The importance of REPS

Say you earn \$250,000 as an accountant, and you and your spouse run a rental real estate business that generates \$150,000 in losses. If neither of you qualifies for REPS, you're taxed on all \$250,000. However, if one spouse claims REPS, you can deduct \$150,000 from your \$250,000 income, meaning you'll only be taxed on \$100,000. That can result in a significant difference in tax liability. One couple told BI how they used this strategy to "zero out" their income taxes for seven years.

Note that you must generate a loss to get the tax benefit. It's fairly common in real estate to generate positive cash flow while showing a loss on your tax returns. That's because of deductions like depreciation — the IRS assumes buildings wear out over time and allows you to deduct a portion of your property's value each year as an expense — and expenses like renovations.

 o qualify for REPS, real estate has to be your primary job, though you don't necessarily have to be a real estate agent. You may qualify if you meet certain hours and activity requirements. The three main stipulations are: you have to spend more than 750 hours a year on real estate activities, more than half your working hours must be in real estate, and you have to materially participate in your rental activities by being involved with the day-to-day operations.

"You can imagine, if somebody's working full time — 2,100 hours a year — it's going to be very difficult to have more time in real estate than their job," said Han. "But if you have a spouse who is a stay-at-home or wants to be a stay-at-home spouse, that's where the opportunity arises."

The short-term rental tax loophole

If qualifying for REPS isn't possible for you and your spouse, you still have the ability to reduce your taxable income using real estate, thanks to a "short-term rental tax loophole," the couple explained.

"Generally speaking, the IRS looks at real estate as more of a passive activity, and if you generate losses, you can only use those losses to offset the real estate income," said MacFarland.

However, the IRS looks at short-term rentals differently.

"If you are involved in the day-to-day operations — you're self-managing it — if you can strategically create losses on paper through depreciation and maximize your deductions, then you can use those losses to offset W-2 income," said MacFarland

Han gives an example of someone earning \$500,000 a year in W-2 income.

*"If you invest in a long-term rental and you can't use it to offset the tax, then maybe you're paying 37% taxes on it," she explained. However, if you turn that property into a short-term rental and you generate a \$200,000 tax loss from it, "that offsets your W-2, so maybe you're saving \$74,000 in taxes."

To benefit from the loophole, your property has to be a short-term rental — meaning, the average guest stay during the year is seven days or less — and you must "materially participate" in managing the property.

To satisfy the material participation requirement, the investor needs to meet one of seven requirements. "99% of the time, we see one of three top ones used," explained Han: The investor spends at least 500 hours on the short-term rental, the investor spends at least 100 hours on the short-term rental but no one else spends more time than they do, or the investor spends more hours than everyone else combined.

For example, the investor spends 80 hours on the property, which is more than the cleaners and gardeners, who spend 50 hours total.

Anyone, regardless of their income level, can benefit from the short-term rental tax loophole, said Han: "For people with lower income, it's even more impactful. If you make \$1 million and you save some tax, great. It's not life-changing. But if you're making \$80,000 and you save a significant amount in taxes, that's a lot more money to invest for that specific taxpayer."

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