

### CHECKLIST C104

#### Factors in Establishing a Profit Motive<sup>a, b, c</sup> (Not an all-inclusive list)

Name/ID: \_\_\_\_\_ Year: \_\_\_\_\_

Preparer's Initials and Date: \_\_\_\_\_ Reviewer's Initials and Date: \_\_\_\_\_

Although an activity must be engaged in for profit to avoid the hobby loss rules, a predictable or highly probable expectation of profit is not required. For example, a taxpayer may well have a profit motive for investing in a very risky venture (e.g., wildcat oil and gas drilling or providing capital to start-up businesses). The circumstances should indicate that the taxpayer entered into or continued the activity with the honest objective of making a profit, but even risky investments can be considered made for a profit motive.

The following factors should be considered in establishing the existence of a profit motive [Reg. 1.183-2(b)]. The courts consistently rely on these factors to determine a profit motive. "Yes" answers to the questions tend to indicate the existence of a profit motive.

	<u>Yes</u>	<u>No</u>	<u>Comments</u>
1. Manner in which activity is conducted:			
a. Is there a legitimate profit or gain motive?	_____	_____	_____
b. Are complete and accurate books and records maintained?	_____	_____	_____
c. Is there stationery, business cards, advertising, or marketing?	_____	_____	_____
2. Taxpayer's or adviser's expertise:			
a. Does taxpayer have prior expertise in the business?	_____	_____	_____
b. Does taxpayer seek advice from qualified advisers?	_____	_____	_____
c. If adviser's advice is not followed, are reasons documented?	_____	_____	_____
3. Time and effort:			
a. Does taxpayer devote substantial time to the activity?	_____	_____	_____
b. Are others employed to carry on the activity?	_____	_____	_____
4. Is there a reasonable expectation of asset appreciation (in lieu of operating profits)? Actual appreciation is not necessary; only an honest expectation of appreciation [ <i>Holmes, Robert E.</i> , 184 F.3d 536, 83 AFTR 2d 99-2987, 99-2 USTC 50,642 (6th Cir. 1999)].	_____	_____	_____
5. Has the taxpayer previously turned a similar unsuccessful business into a profitable one?	_____	_____	_____
6. Has the activity previously generated significant profits?	_____	_____	_____
7. Are profits substantial in relation to any losses and the taxpayer's investment?	_____	_____	_____
8. Is the activity a meaningful part of the taxpayer's overall sources of income?	_____	_____	_____
9. Do profit motives outweigh any elements of personal pleasure or recreation associated with the activity?	_____	_____	_____