# OFFICE OF THE CHIEF COUNSEL

### **DEPARTMENT OF THE TREASURY**

INTERNAL REVENUE SERVICE WASHINGTON, D.C. 20224

IRB No. 2010-14 April 5, 2010

## **ACTION ON DECISION MEMORANDUM**

SUBJECT: <u>James R. Thompson v. United States</u>

Court of Federal Claims No. 06-211 T

### Issue:

Whether an interest in a limited liability company (LLC) is a limited partnership interest as defined under § 1.469-5T(e)(3).

# Discussion:

On July 20, 2009, the Court of Federal Claims issued a summary judgment opinion in <u>Thompson v. U.S.</u>, 87 Fed. Cl. 728 (Fed. Cl. 2009), concluding that LLC interests are not "limited partnership interests" for purposes of § 1.469-5T(e)(3)(i). <u>Thompson joined Garnett v. Commissioner</u>, 132 T.C. 19 (2009) and <u>Gregg v. U.S.</u>, 186 F. Supp. 2d 1123 (D. Or. 2000) as the third case to rule against the position that an interest in an LLC is a limited partnership interest under § 1.469-5T(e)(3)(i).

The taxpayer in <u>Thompson</u> directly owned 99% of an LLC that was in the airplane charter business. The taxpayer indirectly owned the remaining 1% interest through a wholly-owned S corporation. The Service disallowed losses that the taxpayer claimed arguing that the taxpayer failed to meet the restricted material participation requirements that applied to limited partners under § 1.469-5T(e)(3)(i). Both parties stipulated that if the taxpayer's LLC interest was not characterized for purposes of § 469 as a limited partnership interest then the taxpayer could establish material participation using any of the seven tests in § 1.469-5T(a). The Court in <u>Thompson</u> held that the taxpayer's interest was not a limited partnership interest for purposes of § 469, and that even if the interest was treated as an interest in a limited partnership, the taxpayer's interest would best be categorized as a general partnership interest under § 1.469-5T(e)(3)(ii). Consequently, the Court held that the taxpayer could establish material participation using any of the seven tests in § 1.469-5T(a). See also, <u>Garnett</u> and <u>Gregg</u>, *supra*.

**Recommendation:** Acquiesce in result only.

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Reviewer:	
	David R. Haglund Branch Chief, Branch 1 (Passthroughs & Special Industries)
Approved:	
	Curt G. Wilson Associate Chief Counsel (Passthroughs & Special Industries)