

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:3-PLR-108147-99
Date:
December 7, 1999

Legend

Taxpayer =

Year =

Dear

This letter responds to your letter dated April 19, 1999, and subsequent correspondence, requesting a ruling that Taxpayer be given an extension of time to make the election under § 469(c)(7)(A) of the Internal Revenue Code and § 1.469-9(g)(3) of the Income Tax Regulations to treat all interests in rental real estate as a single rental real estate activity.

FACTS

Taxpayer has represented the following facts. Taxpayer qualifies under § 469(c)(7)(A) and (B) to make the election to treat all interests in rental real estate as a single activity. However, Taxpayer failed to include the statement required by § 1.469-9(g)(3) with the return filed for Year 1 to make the election effective for Year 1. Taxpayer seeks relief under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations for the late election.

DISCUSSION

Under § 469(c)(2), the term “passive activity” generally includes any rental activity. Section 469(c)(7) provides a limited exception to this rule for taxpayers in a real property business. Specifically, § 469(c)(7)(A) indicates that if a taxpayer meets

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the requirements of § 469(c)(7)(B), the taxpayer's rental real estate activity will no longer be presumptively passive. By its terms, the exception under § 469(c)(7)(A) is to be applied as if each interest of the taxpayer in rental real estate were a separate activity. However, a taxpayer may elect to treat all interests in rental real estate as a single activity.

Section 1.469-9(g)(3) of the Income Tax Regulations provides that a qualifying taxpayer makes the election to treat all interests in rental real estate as a single rental real estate activity by filing a statement with the taxpayer's original income tax return for the taxable year. Section 1.469-9(g)(3) describes the information that must be contained in the statement.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner uses to determine whether to grant an extension of time to make a regulatory election.

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

CONCLUSION

In the present situation, the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Therefore, Taxpayer is granted an extension of time until 60 days following the date of this letter to make the election under § 469(c)(7)(A) to treat all interest in rental real estate as a single activity effective Year 1. The election must be in the form of the statement required by § 1.469-9(g)(3) and attached to an amended return for Year 1. A copy of this letter should be attached to the election and is included for that purpose.

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Except as specifically set forth above, no opinion is expressed or implied as to the federal tax consequences of the transaction described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether Taxpayer meets the requirements of § 469(c)(7)(B) or whether Taxpayer materially participates in any activity. In addition, no opinion is expressed on Taxpayer's computation of modified adjusted gross income under § 469(i)(3)(E) for the years at issue.

This ruling is directed only to the taxpayer on whose behalf it was requested. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to Taxpayer.

Sincerely yours,

Paul F. Kugler
Assistant Chief Counsel
(Passthroughs and Special Industries)

Attachments:
Copy of this letter
Copy for section 6110 purposes