

Internal Revenue Service

Department of the Treasury

Number: **200206016**
Release Date: 2/8/2002
Index Number: 469.03-00
9100.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2-PLR-127221-01

Date:

November 5, 2001

Legend

Taxpayers =

Year 1 =

Dear :

This letter responds to a letter dated April 30, 2001, and subsequent correspondence, written on behalf of Taxpayers by their authorized representative requesting that the Service grant Taxpayers 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

Taxpayers have represented the following facts. Taxpayers are spouses who qualify under § 469(c)(7)(A) and (B) to make the election to treat all interests in rental real estate as a single activity. However, Taxpayers failed to include the statement required by § 1.469-9(g)(3) with their joint return filed for Year 1 to make the election effective for Year 1. Taxpayers represent that they have filed their income tax returns consistent with having made an election under § 469(c)(7). Taxpayers seek 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 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

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single activity.

Section 1.469-9(g)(3) 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) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 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 will use to determine whether to grant an extension of time to make the election.

Section 301.9100-2 provides rules governing automatic extensions of time for making certain elections.

Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the government.

Conclusion

Based on the information submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Taxpayers are 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 interests 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.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether Taxpayers meet the requirements of § 469(c)(7)(B) or whether Taxpayers materially participate in any activity.

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This ruling is directed only to the Taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to Taxpayers' authorized representative.

Sincerely yours,
Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes