

Internal Revenue Service

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Person To Contact:

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Telephone Number:

In Re:

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Date:

October 15, 2003

Legend

Taxpayers =

Year 1 =

Dear :

This letter responds to a letter dated June 25, 2003, and subsequent correspondence requesting a ruling that Taxpayers be granted an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an 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 commencing in Year 1.

Facts

According to the information submitted, Taxpayers are spouses who intended to elect to treat all interests in rental real estate as a single rental real estate activity under § 469(c)(7)(A). Taxpayers inadvertently failed to make this election for Year 1 when they did not include the statement required under § 1.469-9(g)(3) with their joint return filed for Year 1.

Law and Analysis

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. Section 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 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.

Under § 301.9100-1(c), 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 Code, except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term "regulatory election" as including an election whose deadline is prescribed by a regulation published in the Internal Revenue Bulletin.

Sections 301.9100-1 through 301.9100-3 provide the standards that the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

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 that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

Conclusion

Based solely on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, Taxpayers are granted an extension of time of sixty (60) days from the date of this letter to make an election under § 469(c)(7)(A) to treat all their interests in rental real estate as a single rental real estate 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 provided herein, no opinion is expressed or implied 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 satisfy the requirements under § 469(c)(7)(B) or whether Taxpayers materially participate in any activity.

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

Pursuant to the power of attorney on file with this office, we are sending this letter to you and a copy to Taxpayers.

Sincerely,

/s/

Heather C. Maloy

Office of Associate Chief Counsel