

Under § 469(c)(2), the term “passive activity” general 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) provides that if a taxpayer meets the requirements of § 469(c)(7)(B), the taxpayer’s rental real estate activity will no longer be presumably passive. By its terms, the exception under § 469(c)(7)(A) is to be applied as if each interest of the taxpayer n rental real estate were a separate activity. However, under § 469(c)(7)(A) 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.

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) provides that the term “regulatory election” includes 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 the rules governing automatic extension 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 the regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when a taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonable and in good faith, and (2) granting relief will not prejudice the interests of the government.

Section 301.9100-3(b) provides that, except as provided in § 301.9100-3(b)(3)(i) through (iii), when a taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make the election, the taxpayer will be deemed to have acted reasonably and in good faith.

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 one hundred twenty (120) days form the date of this

letter to make an election under § 469(c)(7)(A) to treat all of 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 other provisions 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 taxpayers requesting it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent. In accordance with the power of attorney on file with this office, a copy of this letter will be sent to your authorized representatives.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: Laura C. Fields
Laura C. Fields
Senior Technician Reviewer, Branch 1
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Enclosures (2)
Copy of this letter
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cc: