

**Internal Revenue Service**

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Person To Contact:  
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Refer Reply To:  
CC:PSI:B03  
PLR-119411-19

Date:  
November 14, 2019

**LEGEND**

A:

B:

Year:

Dear :

This letter responds to a letter dated August 19, 2019, submitted on behalf of A and B, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 469(c)(7) 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**

According to the information submitted, A and B (“Taxpayers”) are married individuals who file their tax returns jointly. Taxpayers represent that in Year, A was in a real property business as defined by § 469(c)(7) and was qualified under § 469(c)(7)(B) to make an election to treat all interests in rental real estate as a single rental real estate activity.

However, Taxpayers represent that they were not advised by their professional tax return preparer that the election under § 469(c)(7) was available to them. Taxpayers represent that they inadvertently filed their joint return for Year without the statement required under § 1.469-9(g)(3).

**LAW**

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 trade or business. Specifically, § 469(c)(7)(A) provides that if a taxpayer meets

the requirements of section 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, 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 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 due date is prescribed by a regulation published in the Federal Register.

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 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides rules for requesting extensions 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 (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) 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 §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, A and B are granted an extension of one hundred-twenty (120) days from the date of this letter to make a § 469(c)(7)(A) election to treat all their interests in rental real estate as a single rental real estate activity for its taxable year ended Year. The election must be in the form of the statement required by § 1.469-9(g)(3) and attached to an amended return for the taxable year ended Year filed with the applicable service center. A copy of this letter should be attached to the election filed.

Except for the specific ruling above, we express or imply no opinion concerning the federal tax consequences of the facts of this case 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.

The ruling contained in this letter is based upon information and representations submitted by Taxpayers and accompanied by a penalty of perjury statement executed by the appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

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

In accordance with a power of attorney on file with this office, we are sending a copy of this letter ruling to your authorized representatives.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

By: \_\_\_\_\_  
Wendy L. Kribell  
Senior Counsel, Branch 3  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter  
Copy of this letter for § 6110 purposes

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cc: