

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

[Third Party Communication:

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B03

PLR-146821-04

Date:

August 25, 2005

Legend

X =

Y =

Year 1 =

Year 2 =

Dear :

This letter responds to a letter dated August 31, 2004, and subsequent correspondence requesting a ruling that X and Y 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.

Facts

According to the information submitted, X and Y are married individuals who file their income tax returns jointly. It is represented that in Year 1 X was in a real property business as defined by § 469 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. X and Y relied on a professional tax return preparer who advised them of the availability and benefits of an election under § 469(c)(7). The return preparer, however, failed to advise X and Y to include the election statement required by § 1.469-9(g)(3) on their joint tax return for Year 1. Consequently, the election under § 469(c)(7) was not made. X and Y have filed their joint tax returns beginning in Year 1 under the assumption that the election under § 469(c)(7)(A) had been made.

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. 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 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 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 301.9100-1(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 §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, X and Y are granted an extension of time of ninety (90) 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 their amended return for Year 2. 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 X satisfies the requirements under § 469(c)(7)(B) or whether X materially participates in any activity.

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

Under a power of attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

/s/

Heather C. Maloy
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes