

## Internal Revenue Service

Department of the Treasury  
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Refer Reply To:

CC:PSI:3 – PLR-126588-06

Date: February 15, 2007

### LEGEND

W =

H =

a =

Dear :

This letter responds to a letter dated April 27, 2006, and subsequent correspondence, submitted on your behalf requesting 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

The information submitted discloses that W and H are married individuals who file their tax returns jointly. It is represented that W is in a real property business as defined by § 469 and is 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. W and H relied on a qualified tax professional, who failed to make the election by including the statement required by § 1.469-9(g)(3) on W and H's joint tax return for the taxable year ending a. Consequently, the election under § 469(c)(7) was not made. W and H filed their joint

PLR-126588-06

return for the taxable year ending a, under the assumption that their tax professional had made the election under § 469(c)(7)(A).

### 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 trade or 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, under § 1.469-9(g)(1) a qualifying taxpayer may elect to treat all interests in rental real estate as a single rental real estate activity.

Section 1.469-9(g)(3) provides that a qualifying taxpayer makes an 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 an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or an 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 an election. 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 that granting relief will not prejudice the interests of the Government.

### CONCLUSIONS

Based solely on the facts and representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied. Consequently, W and H are granted an extension of time of 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

PLR-126588-06

rental real estate activity effective for the taxable year ending a. The election must be in the form of the statement required by § 1.469-9(g)(3) and attached to their amended return for the taxable year ending a. A copy of this letter should be attached to the election.

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 or implied concerning whether W satisfies the requirements under § 469(c)(7)(B) or whether W materially participates in any activity.

This ruling is directed only to the taxpayers requesting it. According to § 6110(k)(3) of the Internal Revenue Code, this ruling 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 forwarded to the taxpayers' authorized representative.

Sincerely,

/s/

WILLIAM P. O'SHEA  
Associate Chief Counsel  
(Passthroughs & Special Industries)

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