

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
GENIN-123861-12

Date:
May 29, 2013

LEGEND

X =
EIN:

Dear :

This letter responds to X's Form 3115, Application for Change in Accounting Method, submitted on X's behalf by its authorized representative.

We believe that you would like to make 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. Although we are unable to respond to your request as submitted, this letter provides information relating to your request.

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) 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 in the statement. Filing the Form

3115 is not a valid way of making the election. Therefore, we could not consider your election.

If you are still interested in making an election to treat all of your interests in rental real estate as a single rental real estate activity and you would like the election to be effective for a tax year prior to 2012, you may request relief for a late § 1.469-9(g) election in one of two ways. Rev. Proc. 2011-34 (see attached) provides guidance allowing certain taxpayers to make late § 1.469-9(g) elections. Alternatively, if you are not eligible for relief under Rev. Proc. 2011-34, you may request relief by applying for a private letter ruling. In this regard, please see Rev. Proc. 2013-1, 2013-1 I.R.B. 1 for the requirements to request a private letter ruling.

Please keep this letter with your tax records. We hope this information is helpful. If you have any further questions, please contact us at _____ (not a toll-free number).

Sincerely,

Laura C. Fields
Senior Technical Reviewer
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)