

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:B03
PLR-113249-19

Date:
November 19, 2019

Legend

A =

Year 1 =

Dear :

This responds to a letter dated May 29, 2019 and subsequent correspondence submitted on your behalf by your authorized representative 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 represented that in Year 1, A was engaged in a real property business as defined by § 469(c)(7)(C) and he 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 under § 469(c)(7)(A).

However, A represents that he was not advised by his tax return preparer that the election under § 469(c)(7) was available to him. As a result, A filed his tax return for Year 1 without the statement required under § 1.469-9(g)(3) to make an election under § 469(c)(7). In addition, it is represented that A's tax return for Year 1, along with subsequent returns, were not filed consistent with making this election because A did not treat all of his rental real estate activities as a single activity on his Federal income tax returns. A further represents that he has acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

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 § 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.

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 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) defines the term “regulatory election” as including an election whose due date is prescribed by a regulation 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 extensions 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 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 to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably 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 information 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 is granted an extension of time of 120 days from the date of this letter to make an election under § 469(c)(7)(A) to treat all of his 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 set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether A satisfies the requirements under § 469(c)(7)(B) or whether A materially participates in any activity.

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

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the 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 is being sent to your authorized representative.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: _____
Adrienne M. Mikolashek
Branch Chief, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes

cc: