

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

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Refer Reply To:

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Date:

Oct 16 2002

Legend

X =
Y =
Year 1 =

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This letter responds to a letter submitted on April 22, 2002, requesting that the Service grant an extension of time to make 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 real estate activity.

Facts

X and Y represent the following facts. X and spouse Y, who qualify under § 469(c)(7)(A) and (B) to make the election to treat all interests in rental real estate as a single activity, inadvertently failed to include with their tax return the statement required by § 1.469-9(g)(3) to make the election effective for Year1.

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 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. Section 469(c)(7)(A) applies as if each interest of the taxpayer in rental real estate were a separate activity, however, a qualifying taxpayer may elect under § 1.469-9(g)(3) to treat all interests in rental real estate as a single rental real estate activity by filing a statement, described in that section, with the taxpayer’s original income tax return for the taxable year.

Under § 301.9100-1(c) of the Procedure and Administration Regulations, 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 with a deadline 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 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.

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.

We conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Therefore, X and Y are granted an extension of time until 60 days following the date of this letter to make an election under § 469(c)(7)(A) to treat all interest in rental real estate as a single 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. A copy is included for that purpose.

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

Sincerely,

/s/ Heather C. Maloy

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

Enclosures (2)
Copy of this letter
Copy for section 6110 purposes