

IRC Section 469(c)(7)(A)

Election to Aggregate Rental Real Estate Activities

Overview

IRC Section 469(c) defines a "passive activity" as any activity which involves the conduct of a trade or business and in which the taxpayer does not materially participate. Furthermore, §469(c)(2) states that the term "passive activity" includes any rental activity without regard to whether or not the taxpayer materially participates in the activity.

Legislation was passed in 1993 to ease the passive loss rules for real estate developers who "materially participate" in their real estate activities. Section 469(a)(7) was added to allow qualifying real estate developers to avoid passive loss classification for certain real estate activities. The provision generally requires that this determination be made on an interest-by-interest basis. However the flush language of Section 469(c)(7)(A) permits certain taxpayers to elect to treat all interests in rental real estate as one activity. The taxpayer can therefore avoid passive treatment of any rental real estate activity for the taxable year by showing material participation in the activities. The election allows the taxpayer to aggregate his or her participation in all of the activities in order to meet the material participation requirements.

The tax payer with real estate activities can avoid passive loss classification under Section 469(c)(7)(A) for a tax year if:

- more than one-half of the personal services performed in trades or businesses by the taxpayer during a taxable year are performed in real property trades or businesses in which the taxpayer materially participates, and
- such taxpayer performs more than 750 hours of services during the taxable year in real property trades or businesses in which the taxpayer materially participates.

If the taxpayer files a joint personal income tax return, the above tests are satisfied if and only if either spouse separately satisfied such requirements.

For purposes of the election, the term "real property trade or business" means any real property development, redevelopment, construction, reconstruction,

acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business.

Although the Code is silent on the subject and no regulations have been issued regarding the manner in which to make the election, it would appear that the election should be made on a year-by-year basis since taxpayers must satisfy material participation requirements on a year-by-year basis.

When to File

Although no regulations have been issued regarding the manner in which to make the election, it seems prudent to attach an election a statement to the taxpayer's income tax return for the taxable year to which the election is to apply. The election should be made no later than the due date, including extensions, of the taxpayer's return for such year.

Where to File

The election statement should be attached to the taxpayer's timely filed return, which is mailed to the designated Internal Revenue Service Center.

Index

1. Code Section: 469
2. Topic: Accounting Periods and Methods; Deduction Items
3. Return Type: 1040

Authorities

IRC §469(c)(7)(A)