



Real Estate Report

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RE Professionals Allowed Late Election

By: John McGovern, Tax Supervisor

A recent Revenue Procedure (2011-34) published by the Treasury Department allows taxpayers to file a late election that treats all real estate as a single activity.

Background:

Most taxpayers must treat real estate rental income and losses as passive in nature. This can limit the losses that can be applied against taxable income.

To classify as non-passive income, the taxpayer must spend at least 750 hours and over 50% of their total working time each year on a rental activity (there are special limits for married couples). Many taxpayers choose to make an election under Treasury

Regulation 1.469-9(g) to group multiple rental activities into one single activity in order to pass the "hours" test.

The primary downside to this election is that passive losses incurred before the election is made may be trapped even after the property is sold. In general, suspended passive losses can be released upon sale of the activity. However, if the grouping election is made, then all of the grouped properties must be sold before passive losses can be released.

The grouping election can be revoked if the taxpayer's facts and circumstances have materially changed. The fact that the

election may have a negative impact on the taxpayer's liability is not a valid reason for evoking the election.

The grouping election, under Treasury Regulation 1.469-9(g), traditionally had to be filed with the tax return (including extensions). Now, taxpayers can retroactively file if they meet the following criteria:

1. The taxpayer failed to make the election solely because of late filing.
2. All prior tax returns were filed consistent with the grouping election treatment.
3. All prior tax returns have been timely filed, including extensions.
4. The taxpayer has reasonable cause.

The revenue procedure is applicable as of June 13, 2011, and applies to all outstanding private letter rulings as of this date.



Is Now a Good Time to Refinance?

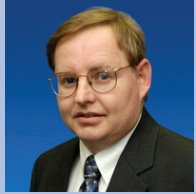
By: Jim Kohles, Stockholder

There are a lot of horror stories out there about mortgage abuses and banks being more vigilant than ever about their loan portfolios. In these troubled times, a close look at a potential refinance is a good business practice. The rates are the lowest they have been in decades as you have probably noticed on your savings accounts. There will be some additional scrutiny from the loan source as you pursue that path but the result may be more than worth the effort.

Most banks are now reasonably solid, have funds to loan and are looking for qualified borrowers. If the traditional sources aren't interested, there are a variety of government agencies that are looking to guarantee loans and there are specialty banks that know how to structure the deal and the applications to meet their criteria. The reporting burden imposed by these government backed loans is more demanding but the savings usually warrant incurring that cost. If you have a current rate above 6%, you should be in the market for a refinance.

Every situation is unique and most businesses have experienced a downturn in their financial condition which is likely causing them to feel some pressure from their existing traditional loan relationship. That doesn't mean that another source isn't willing, available and knowledgeable about some of the less traditional sources. Caution should be exercised when seeking these sources as they may not be as patient about covenant violations as your current banker used to be before the economic downturn. This is just a necessary part of due diligence and could yield a substantial return.

Ask the CPA



Ray Evans, Tax Manager

We have acquired a warehouse in a historic district and plan to restore it. Are there any tax incentives for restoration?

Yes there is. Under the IRC, amounts spent on rehabilitating a building, which exceed the greater of \$5,000 or the adjusted basis of the building, are eligible for a 20 percent tax credit. The rehabilitation must be completed within a taxpayer designated 24-month period (a longer 60-month period is available, if certain conditions are met) and the building must be either certified by the National Park Service as a historic structure or contributing to the historic

significance of a district.

There also is a 10 percent credit for rehabilitation expenditures, under the same rules as above, for buildings placed in service before 1936. The building cannot meet the historic certification or contributing tests.

Early planning is critical; please contact us if you have any questions.



Tom Cox, Tax Supervisor

Can a Real Estate Professional be exempt from the passive loss rules?

Real estate professionals (REP) may treat rental real estate losses as nonpassive if the REP materially participates in real estate activities and meets the tests below. Losses from rental activities can then be used to offset wages, interest and other nonpassive income. An individual is eligible for this nonpassive treatment if more than 50% of personal services in all trades or businesses are performed in real property activities and the individual performs more than 750 hours of service in real property activities. According to the IRS, real property activities include development, redevelopment, construction, reconstruction, acquisition, conversion, rental,

operation, management or brokerage. Recent court decisions have broadened this definition to include real estate agents (who may or may not be brokers per state law). When applying the 50% and 750 hours tests, the personal services of an employee are not treated as performed in real estate activities unless he or she has more than a 5% ownership interest in the employer.

Once the above hurdles are cleared, the REP must also materially participate in the real estate activity for which he or she is seeking nonpassive treatment. In order to meet the material participation standard the REP must meet one of seven criteria defined in the Treasury Regulations. Please give your RINA representative a call to discuss this further.



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Complimentary Lunch will be served

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