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Reg. Section 1.469-9(c)(4)

Rules for certain rental real estate activities

- (a) Scope and purpose. This section provides guidance to taxpayers engaged in certain real property trades or businesses on applying section 469(c)(7) to their rental real estate activities.
- (b) Definitions. The following definitions apply for purposes of this section:
 - (1) Trade or business. A trade or business is any trade or business determined by treating the types of activities in §1.469-4(b)(1) as if they involved the conduct of a trade or business, and any interest in rental real estate, including any interest in rental real estate that gives rise to deductions under section 212.
 - (2) Real property trade or business. Real property trade or business is defined in section 469(c)(7)(C).
 - (3) Rental real estate. Rental real estate is any real property used by customers or held for use by customers in a rental activity within the meaning of $\S1.469-1T(e)(3)$. However, any rental real estate that the taxpayer grouped with a trade or business activity under $\S1.469-4(d)(1)(i)(A)$ or (C) is not an interest in rental real estate for purposes of this section.
 - (4) Personal services. Personal services means any work performed by an individual in connection with a trade or business. However, personal services do not include any work performed by an individual in the individual's capacity as an investor as described in §1.469-5T(f)(2)(ii).
 - (5) Material participation. Material participation has the same meaning as under §1.469-5T. Paragraph (f) of this section contains rules applicable to limited partnership interests in rental real estate that a qualifying taxpayer elects to aggregate with other interests in rental real estate of that taxpayer.
 - (6) Qualifying taxpayer. A qualifying taxpayer is a taxpayer that owns at least one interest in rental real estate and meets the requirements of paragraph (c) of this section.
- (c) Requirements for qualifying taxpayers.
 - (1) In general. A qualifying taxpayer must meet the requirements of section 469(c)(7)(B).
 - (2) Closely held C corporations. A closely held C corporation meets the requirements of paragraph (c)(1) of this section by satisfying the requirements of section 469(c)(7)(D)(i). For purposes of section 469(c)(7)(D)(i), gross receipts do not include items of portfolio income within the meaning of $\S1.469-2T(c)(3)$.

- (3) Requirement of material participation in the real property trades or businesses. A taxpayer must materially participate in a real property trade or business in order for the personal services provided by the taxpayer in that real property trade or business to count towards meeting the requirements of paragraph (c)(1) of this section.
- (4) Treatment of spouses. Spouses filing a joint return are qualifying taxpayers only if one spouse separately satisfies both requirements of section 469(c)(7)(B). In determining the real property trades or businesses in which a married taxpayer materially participates (but not for any other purpose under this paragraph (c)), work performed by the taxpayer's spouse in a trade or business is treated as work performed by the taxpayer under $\S1.469-5T(f)(3)$, regardless of whether the spouses file a joint return for the year.
- (5) Employees in real property trades or businesses. For purposes of paragraph (c)(1) of this section, personal services performed during a taxable year as an employee generally will be treated as performed in a trade or business but will not be treated as performed in a real property trade or business, unless the taxpayer is a five-percent owner (within the meaning of section 416(i)(1)(B)) in the employer. If an employee is not a five-percent owner in the employer at all times during the taxable year, only the personal services performed by the employee during the period the employee is a five-percent owner in the employer will be treated as performed in a real property trade or business.

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