

which a taxpayer applies the rules of either the proposed definition of activity regulations or the final definition of activity regulations in determining tax liability, the taxpayer must regroup its activities if its previous grouping is inconsistent with the applicable rules. Although the rules permitting or requiring a taxpayer to regroup activities refer to the taxpayer's determination of tax liability under section 469, they will be applied to partnerships and S corporations conducting activities subject to section 469.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Thursday, May 11, 1995, at 10:00 a.m. in the auditorium of the Internal Revenue Building. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and outlines of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 20, 1995.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### Drafting Information

The principal author of these regulations is William M. Kostak, Office of Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART I—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

**Authority:** 26 U.S.C. 7805. \* \* \*

Section 1.469-9 also issued under 26 U.S.C. 469(c)(6), (h)(2), and (l)(1).

**Par. 2.** Section 1.469-0 is amended by:

1. Revising the entry for § 1.469-4(h).
2. Revising the heading for § 1.469-9 and adding entries for paragraphs (a) through (j) of § 1.469-9.
3. Revising the entry for § 1.469-11(b)(2) and removing the entries for § 1.469-11(b)(2) (i) and (ii).
4. Revising the entry for § 1.469-11(b)(3).
5. Adding an entry for § 1.469-11(b)(4).
6. The revisions and additions read as follows:

#### § 1.469-0 Table of contents.

\* \* \* \* \*

#### § 1.469-4 Definition of Activity.

\* \* \* \* \*

(h) Rules for grouping rental real estate activities for taxpayers qualifying under section 469(c)(7).

\* \* \* \* \*

#### § 1.469-9 Rules for certain rental real estate activities.

(a) Scope and purpose.

(b) Definitions.

- (1) Trade or business.
- (2) Real property trade or business.
- (3) Rental real estate.
- (4) Personal services.
- (5) Material participation.
- (6) Qualifying taxpayer.

(c) Requirements for qualifying taxpayers.

- (1) In general.
- (2) Requirement of material participation in the real property trades or businesses.
- (3) Treatment of spouses.
- (4) Employees in real property trades or businesses.

(d) General rule for determining real property trades or businesses.

- (1) Facts and circumstances.
- (2) Consistency requirement.
- (e) Treatment of rental real estate activities of a qualifying taxpayer.
  - (1) In general.
  - (2) Treatment as a former passive activity.
  - (3) Grouping rental real estate activities with other activities.
- (f) Limited partnership interests in rental real estate activities.
  - (1) In general.
  - (2) De minimis exception.
- (g) Election to treat all interests in rental real estate as a single rental real estate activity.
  - (1) In general.
  - (2) Certain changes not material.
  - (3) Filing a statement to make or revoke the election.
- (h) Interests in rental real estate held by certain passthrough entities.
  - (1) General rule.
  - (2) Special rule if a qualifying taxpayer holds a fifty-percent or greater interest in a passthrough entity.
- (i) [Reserved].
- (j) \$25,000 offset for rental real estate activities of qualifying taxpayers.
  - (1) In general.
  - (2) Example.

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#### § 1.469-11 Effective date and transition rules.

\* \* \* \* \*

(b) \* \* \*

- (2) Additional transition rule for 1992 amendments.
- (3) Fresh starts under consistency rules.
  - (i) Regrouping when tax liability is first determined under Project PS-1-89.
  - (ii) Regrouping when tax liability is first determined under § 1.469-4.
  - (iii) Regrouping when taxpayer is first subject to section 469(c)(7).
- (4) Certain investment credit property.

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**Par. 3.** Section 1.469-4 is amended by revising paragraph (e)(1) and the heading of paragraph (h) and by adding the text of paragraph (h) to read as follows:

#### § 1.469-4 Definition of Activity.

\* \* \* \* \*

(e) \* \* \*

(1) *Original groupings.* Except as provided in paragraph (e)(2) of this section and § 1.469-11, once a taxpayer has grouped activities under this section, the taxpayer may not regroup those activities in subsequent taxable years. Taxpayers must comply with disclosure requirements that the Commissioner may prescribe with respect to both their original groupings and the addition and disposition of specific activities within those chosen groupings in subsequent taxable years.

\* \* \* \* \*

(h) *Rules for grouping rental real estate activities for taxpayers qualifying under section 469(c)(7).* See § 1.469-9