



## Tax Reduction Letter

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### PLR 8410038

This is in reference to a ruling request dated June 10, 1983, and subsequent correspondence submitted by your authorized representative on your behalf and on A's behalf, concerning the application of section 280A of the Internal Revenue Code to the transaction described below.

On May 20, 1982, you and A jointly purchased a premises. You and A are jointly liable on the mortgage note in the amount of \$ 40,000 with monthly payments of principal and interest of \$ 444. You furnished the down payment of \$ 26,000.

You and A have executed a contract entitled an "Equity Sharing Contract" which provides, in part, that A may live in the premises in exchange for paying one-half of the monthly mortgage payment ( \$ 222.00) plus the sum of \$ 275.00 per month as a rental to you for A's use of your interest in the premises. Also, this contract provides that at the end of a five-year period A will refund to you your initial \$ 26,000 investment as well as one-half of the "equity" in the property as defined in the agreement. A can renew the agreement for an additional 5-year period at her option.

Section 280A(a) of the Code provides that, except as otherwise provided in this section, in the case of a taxpayer who is an individual or an electing small business corporation, no deduction otherwise allowable under this chapter shall be allowed with respect to the use of a dwelling unit which is used by the taxpayer during the taxable year as a residence.

Section 280A(c)(5) of the Code provides, in pertinent part, that in the case where the dwelling unit is used by the taxpayer during the taxable year as a residence, the deductions allowed under the chapter for the taxable year by reason of being attributed to such use shall not exceed the excess of (A) the gross income derived from such use for the taxable year, over (B) the deductions allocable to such use which are allowable under this chapter for the taxable year whether or not such unit (or portion thereof) was so used.

Section 280A(d)(1) of the Code provides that for purposes of this section, a taxpayer uses a dwelling unit during the taxable year as a residence if he uses such unit (or portion thereof) for personal purposes for a number of days which exceeds the greater of (A) 14 days, or (B) 10 percent of the number of days during such year for which such unit is rented at a fair rental.

Section 280A(d)(2)(A) provides, in part, that for purposes of this section, the taxpayer shall be deemed to have used a dwelling unit for personal purposes for a day if, for any part of such day, the unit is used for personal purposes by the taxpayer or any other person who has an interest in such unit.

Section 280A(d)(3)(A) provides that a taxpayer shall not be treated as using a dwelling unit for personal purposes by reason of a rental arrangement for any period if for such period the dwelling unit is rented, at a fair rental, to any person for use as such person's principal residence.

Section 280A(d)(3)(B) of the Code provides as follows:

(B) Special rules for rental to person having interest in unit--

(i) Rental must be pursuant to shared equity financing agreement--Subparagraph (A) shall apply to a rental to a person who has an interest in the dwelling unit only if such rental is pursuant to a shared equity financing agreement.

(ii) Determination of fair rental--In the case of a rental pursuant to a shared equity financing agreement, fair rental shall be determined as of the time the agreement is entered into and by taking into account the occupant's qualified ownership interest.

(C) Shared equity financing agreement--For purposes of this paragraph, the term "shared equity financing agreement" means an agreement under which--

(i) 2 or more persons acquire qualified ownership interests in a dwelling unit, and

(ii) the person (or persons) holding 1 or more of such interests--

(I) is entitled to occupy the dwelling unit for use as a principal residence, and

(II) is required to pay rent to one or more other persons holding qualified ownership interest in the dwelling unit.

(D) Qualified ownership interest--For purposes of this paragraph, the term "qualified ownership interest" means an undivided interest for more than 50 years in the entire dwelling unit and appurtenant land being acquired in the transaction to which the shared equity financing agreement relates.

Based strictly on the information submitted, and the terms of the aforementioned "Equity Sharing Contract," we conclude that the provisions of section 280A(d)(3)(B) will apply so that you will not be considered to have used the premises for personal purposes under section 280A(d)(2)(A). Therefore, you will not be considered to have used the premises as a "residence" and section 280A(c)(5) will not apply to limit the deductions attributable to the rental of your share of the premises to the gross income derived from the rental.

The above ruling is based strictly on the condition that (1) the title obtained by you and A to the premises will grant you a "qualified ownership interest" as defined in section 280A(d)(3)(D) of the Code and (2) that the rent paid to you by A is a fair rental at the time the agreement is entered into, taking into account your qualified ownership interest.

Except as specifically ruled upon above, no opinion is expressed as to the federal income tax consequences of the transaction described above under any other provision of the Code.

You should attach a copy of this ruling to your return for any taxable year in which you deduct expenses attributable to this transaction.

This ruling is directed only to the taxpayer who requested it. Temporary or final regulations pertaining to one or more of the issues addressed in this letter have not yet been adopted. Therefore, this letter may be modified or revoked if the adopted temporary or final regulations are inconsistent with any conclusion in the letter. See section 1705 of Rev. Proc. 83-1, 1983-1 I.R.B. 10. However, when the criteria in section 17.06 of Rev. Proc. 83-1 are satisfied, a ruling letter is not revoked or modified retroactively, except in rare and unusual circumstances.