

Prop. Reg. Section 1.280A-3(e)

Deductions for Business Use or Rental of a Dwelling Unit; Proposed Rulemaking

July 21, 1983

Par. 3. Section 1.280A-3, as proposed, is amended as follows:

1. Paragraph (c)(1) is amended by removing " § 1.280A-1(e)(4)" and inserting in lieu thereof " § 1.280A-1(e)(6)" and by removing the word "calendar" wherever it appears.

2. Paragraph (d)(1) is amended by removing "section 280A(d)(3) and § 1.280A-1(e)(2)" and inserting in lieu thereof "section 280A(d)(4) and § 1.280A-1(e)(4)."


3. Paragraph (e)(5) is redesignated as paragraph (e)(6).

4. Paragraph (f)(5) is amended by adding "(determined without regard to the provisions of § 1.280A-1(g)" after the words "fair rental" in the second sentence.

5. Paragraph (e)(4) is revised and paragraph (e)(5) is added to read as set forth below:

§ 1.280A-3 Deductibility of expenses attributable to the rental of a dwelling unit used as a residence.

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 (e) *Application of the provisions of § 1.280A-1 and this section to rental pools.* * * *

(4) *Determination of use when averaging is not elected -- (i) Applicability.* This paragraph (e)(4) applies with respect to a rental pool unit only for periods for which the unit is not subject to paragraph (e)(5) of this section.

(ii) *Actual use rule.* For purposes of § 1.280A-1(d)(1) and paragraph (c) of this section, the number of days on which the unit is rented at fair rental and the number of days on which the unit is used for any purpose shall be determined by reference to the actual use of the unit. Availability for rental through the rental pool does not constitute rental at a fair rental or use of the unit for any purpose. If the taxpayer's unit is actually rented at a fair rental on any day during the taxpayer's participation in the rental pool, the taxpayer may count that day as a day on which the unit is rented at a fair rental although the taxpayer receives only a portion of the rent paid.

(iii) *Furnishing information.* The rental agency managing the rental pool shall furnish the taxpayer within 60 days after the end of the pool season a written statement indicating the number of days the taxpayer's unit was actually rented at fair rental and the number of days the unit was used for any other purpose (other than repair and maintenance) during the pool season.

(5) *Election to average rental use -- (i) Applicability.* This paragraph (e)(5) applies to a taxpayer with respect to participation in a rental pool season only if --

(A) The taxpayer signs and furnishes to the pool management a document stating that the taxpayer irrevocably consents to the application of this paragraph (e)(5) for that pool season, and

(B) the pool management sends to the taxpayer a written notice stating that there has been unanimous consent by all pool participants to the application of this paragraph (e)(5) for the pool season and providing the taxpayer with the information necessary to enable the taxpayer to comply with the rules of this paragraph (e)(5).

It is not necessary that the taxpayer furnish a separate consent for each pool season; a consent may provide that it applies to more than one pool season. If the Commissioner determines that there has not been unanimous consent to the application of this paragraph (e)(5) or that the pool management has failed to provide the required notice to pool participants, the Commissioner may require all pool participants to determine the use of their units under paragraph (e)(4) of this section.

(ii) *General rules.* All taxpayers with interests in units participating in a rental pool during a pool season with respect to which this paragraph (e)(5) applies shall determine the number of days that the unit is rented at fair rental during its participation in a rental pool in that pool season under paragraph (e)(5)(iii) of this section. All use of the unit on days other than participation days and all use of the unit on participation days other than use at fair rental shall be determined by reference to actual use of the unit. These determinations are for purposes of applying § 1.280-1(d)(1) and paragraph (c) of this section.

(iii) *Averaging formula.* The aggregate number of days that units in the rental pool were rented at fair rental during the pool season shall be apportioned among the units in the pool according to the following ratio:

number of participation days of a particular unit / aggregate number of participation days of all units

Thus, if the aggregate number of days of rental at fair rental for all units in a pool were 300, the number of participation days of a particular unit were 80, and the aggregate number of participation days of all units in the pool were 480, the number of days of rental at fair rental to be allocated to the particular unit would be 50, computed as follows:

$$80 / 480 \times 300 = 50$$

(iv) *When pool season overlaps 2 taxable years.* If a pool season with respect to which this paragraph (e)(5) applies overlaps 2 taxable years of a person with an interest in a unit participating in the rental pool during that pool season, that person shall apportion the number of days of fair rental allocated to that unit for that season under paragraph (e)(5)(iii) of this section between the taxable years according to the following ratio:

number of participation days of the unit during the pool season that fall in the taxable year / number of participation days of the unit during the pool season

(v) *"Participation day" defined.* A "participation day" of a unit is a day for which that unit is entered in the rental pool.