



Tax Reduction Letter

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Revenue Ruling 79-209

Section 167 - Depreciation

Depreciation; residential rental property; duplex. The purchaser of a new duplex consisting of units of comparable value who uses one of the units as a personal residence and rents the other unit at its fair rental value for use as a residential unit is entitled to use an accelerated method of depreciation greater than the 150 percent declining balance method for the leased unit.

ISSUE

Is an owner of residential property (a type of section 1250 property), under the circumstances described below, entitled to use an accelerated method of depreciation greater than the 150 percent declining balance method for "residential rental property"?

FACTS

The taxpayer purchased a new duplex residential property located in the United States, consisting of an upper and lower unit of comparable value. The taxpayer used one of the units as a personal residence and rented the other unit at its fair rental value to a tenant who used it as a residential rental unit. The taxpayer apportioned the adjusted basis, less land value, between the unit used as a personal residence and the leased unit and claimed a depreciation deduction on the leased unit using an accelerated method of depreciation greater than the 150 percent declining balance method.

LAW AND ANALYSIS

Section 1.167 (j)-1 (a) (1) of the Income Tax Regulations provides generally that when the original use of section 1250 property commences with the taxpayer after July 24, 1969, the 200 percent declining balance method and the sum of the years-digits method of depreciation are available only with respect to residential rental property.

Section 167 (j) (2) (B) of the Internal Revenue Code provides that a building or structure shall be "residential rental property" for any taxable year if 80 percent or more of its gross rental income is rental income from dwelling units. The gross rental income from a building or structure shall include the rental value of the portion occupied by the taxpayer.

Section 167 (j)-3 (b) (1) (i) of the regulations defines the term "residential rental property" as a building or structure used to provide living accommodations on a rental basis, provided that 80 percent or more of the gross rental income (gross amounts received for the use of or the right to use real property) for such taxable year from such building is rental income from dwelling units. Generally, a dwelling unit may be a house or an apartment used to provide living

accommodations but not any unit in a hotel, motel, inn, or other establishment if more than one-half of the units are used on a transient basis.

Section 1.167 (j)-3 (b) (4) (iii) of the regulations provides that the fair rental value of any portion used by the taxpayer shall be included in gross rental income in determining whether the building or structure qualifies as residential rental property. See the examples in section 1.167 (j)-3 (b) (6) of the regulations.

The test as to whether property qualifies as residential rental property depends to what extent such property is used for purposes other than as a dwelling unit and the relative fair rental values of the uses. The test does not turn on whether such use is by the taxpayer or others.

In the instant case, the taxpayer rents one unit, or 50 percent of the building, to a tenant who uses it as a residential dwelling unit and the rental income from such use is included in the gross rental income of the building as gross rental income from a dwelling unit. Since the other unit, or the other 50 percent of the building, is used by the taxpayer as a dwelling unit (personal residence), its fair rental value also is to be included in the gross rental income of the building as gross income from a dwelling unit in determining whether the building qualifies as residential rental property. Therefore, over 80 percent of the gross rental income of the building is gross rental income from dwelling units and the building qualifies as residential rental property for purposes of section 1.167 (j)-3 of the regulations.

HOLDING

The owner of residential rental property, under the circumstances described above, is entitled to use an accelerated method of depreciation greater than the 150 percent declining balance method for the leased unit that is part of the taxpayer's residential rental property.