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Prop. Reg. Section 1.280A-3(d)(1)

Deductibility of expenses attributable to the rental of a dwelling unit used as a residence

(a)Scope. This section provides rules for determining the deductibility of expenses attributable to the rental of a dwelling unit used as a residence. Note that paragraph (c) of this section applies to any dwelling unit used by the taxpayer for personal purposes on any day during the taxable year, whether or not the taxpayer is treated as using the unit as a residence. See §1.280A-1 for the general rules under section 280A.

(b)Short rental period. If a dwelling unit used by the taxpayer as a residence during the taxable year is actually rented for less than 15 days during the taxable year,

(1) No deduction otherwise allowable because of the rental use shall be allowed, and

(2) The rental income shall not be included in gross income.

(c)Allocation.

(1)In general. If a taxpayer uses a dwelling unit for personal purposes on any day during the taxable year, the amount deductible by reason of the rental use of the unit during the taxable year shall not exceed an amount which bears the same relationship to the total expenses paid or incurred with respect to the unit during the taxable year as the number of calendar days on which the unit is rented at fair rental during the year bears to the total number of calendar days that the unit is used for any purpose during the taxable year. For purposes of section 280A(e) and this section, the fact that a unit is deemed to be used for personal purposes on a particular day does not prevent that day from being counted as a day on which the unit is rented at fair rental. Use of a unit for repair and maintenance which is disregarded under §1.280A-1(e)(4) shall be disregarded for purposes of this paragraph.

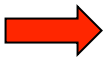
(2)Portion of unit rented. If the taxpayer rents only a portion of the dwelling unit, the rule prescribed in subparagraph (1) of this paragraph shall be applied to the expenses attributable to that portion of the unit, and the days to be taken into account shall be the days on which that portion of the unit is rented at fair rental during the taxable year and the days on which that portion of the unit is used for any purpose during the taxable year. The expenses attributable to any portion of a unit shall be determined in accordance with the rules prescribed in §1.280A-2(i)(3).

(3)Deductions allowable without regard to rental use. This paragraph shall not disallow any part of those deductions with respect to a dwelling unit which are allowable without regard to the rental use of the unit.

(4) Example. The provisions of this paragraph may be illustrated by the following example:

Example. A, an individual, owns a cottage which A rents to vacationers at fair rental for 120 days during the taxable year. A is deemed to have made personal use of the cottage on 15 of those 120 days. The unit is used for one or more purposes (other than repair or maintenance) on 160 days during the taxable year. The amount that A may claim as rental expenses may not exceed 120/160 of the total expenses paid or incurred with respect to the unit during the taxable year. If A itemizes deductions, A may claim the remaining 40/160 of items, such as mortgage interest and taxes, which are deductible without regard to the rental use of the unit.

(d)Limitation on deductions if taxpayer has used dwelling unit as a residence.



(1)In general. The deductions allowable under chapter 1 of the Code for a taxable year with respect to the rental use of a dwelling unit which the taxpayer is treated as having used as a residence during such year shall not exceed the gross rental income from the unit for such year. See section 280A(d)(3) and §1.280A-1(e)(2) for special rules affecting the determination whether the taxpayer has used a unit as a residence if any day during the taxable year is part of a "qualified rental period."

(2)Gross rental income. For purposes of section 280A and this section gross rental income from a unit equals the gross receipts from rental of the unit reduced by expenditures to obtain tenants for the unit, such as realtor's fees and advertising expense. The gross rental income from a unit for a taxable year includes rental income for periods during which the unit is rented at less than a fair rental as well as rental income for periods during which the unit is rented at fair rental.

(3)Order of deductions. Deductions with respect to the rental use of a dwelling unit are allowable in the following order and only to the following extent:

(i) The allocable portions of amounts otherwise allowable as deductions for the taxable year under chapter 1 of the Code with respect to the dwelling unit without regard to the rental use of the unit, e.g., mortgage interest and real estate taxes, are deductible as rental expenses to the extent of the gross rental income from the unit.

(ii) The allocable portions of amounts otherwise allowable as deductions for the taxable year under chapter 1 of the Code by reason of the rental use of the dwelling unit (other than those which would result in an adjustment to the basis of property) are allowable to the extent the gross rental income exceeds the deductions allowed or allowable under subdivision (i) of this subparagraph.

(iii) The allocable portions of amounts otherwise allowable as deductions for the taxable year under chapter 1 of the Code by reason of the rental use of the dwelling unit which would result in an adjustment to the basis of property are allowable to the extent the gross rental income exceeds the deductions allowed or allowable under subdivisions (i) and (ii) of this subparagraph.

For purposes of this subparagraph, the portion of any item which is allocable to the rental use of a unit during a taxable year shall be that amount which bears the same relationship to the total amount of the item as the number of days on which the unit is rented at a fair rental during the taxable year bears to the number of days on which the unit is used for any purpose (other than repair or maintenance) during the taxable year.

(4)Example. The provisions of this paragraph may be illustrated by the following example:

Example. B owns a lakeside home which B rents at a fair rental for 90 days during the taxable year. B uses the home for personal purposes on 20 other days during the taxable year and also rents it to a friend at a discount for 10 days. Thus, the home is used for some purpose (other than repair or maintenance) on 120 days during the taxable year, and the rental allocation fraction may not exceed 90/120. On the basis of the following figures, B determines that the sum of the rental expenses for the home for the taxable year that are deductible under subparagraph (3) of this paragraph is $2,200. The advertising expense and the realtor's fee are also deductible.

Gross receipts from rental:

90 days at $25 per day $2,250

10 days at $15 per day 150

Total 2,400

Computation of gross rental income:

Gross receipts from rental 2,400

Less: Advertising and realtor's fee 200

Gross rental income 2,200

	Total	Allocable to rental
Deductions allowable under subparagraph (3)(i) of this paragraph:		
Mortgage interest	$1,000	$750
Real estate taxes	800	600
Amount allowable	1,350	
Limit on further deductions	850	
Deductions allowable under subparagraph (3)(ii) of this paragraph:		
Insurance	400	300
Utilities	600	450
Amount allowable	750	

Limit on further deductions 100

Deductions allowable under subparagraph (3)(iii) of this paragraph:

Depreciation 1,500 1,125

Amount allowable 100

Note. -If B itemizes deductions, B may claim the other $250 in mortgage interest and the other $200 in real estate taxes as itemized deductions.

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

(1)In general. In the case of a dwelling unit which is entered in a rental pool, as defined in subparagraph (2) of this paragraph, during the taxable year, the provisions of §1.280A-1 and this section shall be applied in accordance with this paragraph.

(2)Rental pool. For purposes of this section, the term "rental pool" means any arrangement whereby two or more dwelling units are made available for rental and those persons with interests in the units agree to share at least a substantial part of the rental income from the units without regard to the actual use of the various units. The fact that those persons with interests in a particular unit are entitled to an occupancy fee or other payment for the actual use of the unit does not prevent the arrangement from constituting a rental pool if the percentage of the rental income in which the participants in the arrangement share is substantial.

(3)Gross rental income of participants. Participants in a rental pool shall include in gross rental income all amounts received or accrued by reason of participation in the rental pool (including payments such as occupancy fees) except amounts which are clearly not rental income, e.g., interest earned on deposits held in escrow on behalf of the rental pool participants. Thus, a taxpayer who participates in a rental pool may have gross rental income although the unit in which the taxpayer has an interest is not actually rented during the taxable year.

(4)Determination of use. 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 other 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 rental paid.

(5)Reciprocal arrangements. If the rental pool agreement provides that a participant whose unit is rented on a given day may make use of another unit in the pool on that day, a taxpayer who has an interest in a unit so used by another participant shall be deemed to

have used the unit for personal purposes on any day on which another participant uses the unit under that provision of the agreement.

(f)Application of the rules of §1.280A-1 and this section to time sharing arrangement.

(1)In general. In the case of a dwelling unit which is used during the taxable year under a time sharing arrangement, as defined in subparagraph (2) of this paragraph, the provisions of §1.280A-1 and this section shall be applied in accordance with this paragraph.

(2)Time sharing arrangement. For purposes of this section, the term "time sharing arrangement" means any arrangement whereby two or more persons with interests in a dwelling unit agree to exercise control over the unit for different periods during the taxable year. For example, an arrangement under which each of twelve persons with interests in a unit is entitled to exercise control over the unit for one month during the taxable year is a time sharing arrangement. Whether all twelve persons have undivided interests in the unit for the entire year or each has the sole interest in the unit for a single month during the year is immaterial.

(3)Use for personal purposes. For purposes of §1.280A-1(d) and (e), each of the persons with an interest in the unit subject to the time sharing arrangements shall be considered to have a continuing interest in the unit regardless of the terms of the interest under local law.

(4)Short rental period. The provisions of paragraph (b) of this section shall be applied on the basis of the number of days that the unit is actually rented during the entire taxable year.

(5)Allocation rule. The provisions of paragraph (c) of this section shall apply if any person with an interest in the unit is deemed to use the unit for personal purposes on any day during the taxable year. The provisions of paragraph (c) of this section shall be applied on the basis of the taxpayer's expenses for the unit, the number of days during the taxable year that the unit is rented at a fair rental, and the number of days during the taxable year that the unit is used for any purpose.

(6)Limitation on deductions. The provisions of paragraph (d) of this section shall be applied on the basis of the taxpayer's rental income and expenses with respect to the unit.