

SECTION 199A

RENTAL REAL ESTATE TRADE OR BUSINESS CHECKLIST:

This checklist is designed to help tax professionals determine the level of activity for the purpose of evaluating a rental activity's qualification for trade or business status under IRC section 162 for purposes of the pass-through deduction under IRC section 199A. The superscripted numbers refer to specific court cases or other guidance included in the "Court Cases & Other Guidance" to be used with this worksheet. This checklist does not provide a definitive determination, but rather assembles the information helpful to arrive at a decision based upon the facts and circumstances of the situation.

⁽²⁴⁾ Check this box if the activity meets the 250-hour safe harbor requirements of Notice 2019-07. (If you have checked this box and documented the safe-harbor requirements, the activity is deemed to be a trade or business for purposes of the Sec 199A, and you don't need to use the checklist.)

The level of activity need not rise to the 250-hour safe harbor level of Notice 2019-07 to qualify as a trade or business under IRC Section 162, but there must be some level of activity above that of a triple net lease,⁽²⁵⁾ which is specifically excluded from the definition of a trade or business under Sec 199A. (See prologue to the final Sec 199A regulations, page 17, section II.A.3.b. & Notice 2019-07, section 3.05). The courts (particularly the Tax Court confirmed by GCM 38779), have found that only "a relatively small amount of activity" is indicative of a trade or business. Use this worksheet to gather the facts and circumstances to help determine if the rental activity meets the Sec 162 definition of a trade or business.

A. Describe rental property

Commercial, Residential, Land lease,^{(17) (18)} Farm land⁽¹⁷⁾

Other (describe): _____

B. How many other rental activities does the taxpayer own? _____

C. How long has this rental property been owned: _____

D. Has its use always been a rental? Yes No^{(2) (19) (22)}

E. If no, explain: _____

F. Is it rented at less than FRV? Yes No^{(1) (20)}

G. Did owner attempt to rent it but fail to do so? Yes No^{(8) (9) (10) (11)}

If yes, how long did owner attempt to rent? _____

H. Describe efforts to rent & conditions that hindered rental:

I. Has it been continuously rented or available for rent? Yes No ^{(3) (10) (11) (12)}

If no, explain: _____

J. Check the boxes of the following expenses the owner or owner's property manager or other agent paid on behalf of the taxpayer: ^{(6) (15) (16)}

Mortgage P & I Taxes Insurance Utilities Fees

Homeowner assessments Other (describe) _____

K. Was the taxpayer or the taxpayer's property manager or other agent responsible for the repairs and maintenance for the rental? Yes No ^{(4) (13) (14) (15) (16)}

L. Check the boxes and give cost for the repairs and maintenance actually completed by the taxpayer or the taxpayer's property manager or other agent during the year: ^{(8) (14) (15) (16)}

Gardening \$ _____ Landscaping \$ _____

Tree service \$ _____ Pool maintenance \$ _____

Painting \$ _____ Roof repairs \$ _____

Appliance repair/replacement \$ _____ Electrical \$ _____

Plumbing \$ _____

Other (description): _____ \$ _____

M. Management activities performed by the taxpayer, property manager, or taxpayer's other agent during the year: ^{(9) (13) (16)}

Showed property Prepared, negotiated and/or renewed leases

Presided over evictions Maintained the books and records Supplying furnishings Cleaning & preparing unit(s)

*Rental activities that are specifically not trades or businesses:

- Triple net lease ⁽²⁵⁾
- Home rented to a related individual or entity at less than fair rental value ⁽²⁰⁾
- Vacation home rental ⁽²⁰⁾