



TaxNewsFlash

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Rev. Proc. 2021-9: Residential living facility safe harbor election under section 163(j)

The IRS today released an advance version of Rev. Proc. 2021-9 to provide a safe harbor to allow a trade or business that manages or operates a “qualified residential living facility” to be treated as a real property trade or business solely for purposes of qualifying to make the election under section 163(j)(7)(B) to be an “electing real property trade or business.”

Section 163(j) concerns the limitation on deductions for certain business interest expenses. In connection with regulations and other guidance under section 163(j), the IRS issued Notice 2020-59 as a proposed revenue procedure to provide a safe harbor for a trade or business that manages or operates a qualified residential living facility to be treated as a real property trade or business for purposes of the election under section 163(j)(7)(B) to be treated as an electing real property trade or business. Read [TaxNewsFlash](#) [PDF 578 KB]

[Rev. Proc. 2021-9](#) [PDF 143 KB] in providing the safe harbor addresses comments received in response to Notice 2020-59. Under the safe harbor provided by today’s revenue procedure, a taxpayer engaged in a trade or business that manages or operates a qualified residential living facility may treat such trade or business as a real property trade or business solely for purposes of the election under section 163(j)(7)(B) to be an electing real property trade or business. The revenue procedure clarifies that satisfying the requirements of this safe harbor is not a determination that the taxpayer is engaged in a real property trade or business for purposes of section 469.

Rev. Proc. 2021-9 addresses the effect of safe harbor election and how to make the election. Taxpayers may apply the rules of Rev. Proc. 2021-9 to tax years beginning after December 31, 2017.

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