



Time records required for rental real estate brokers - by Andrew Lieb

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Attention rental brokers – there is a new Safe Harbor available for your clients to claim qualified business income that is entitled to a 20% income tax deduction set forth at 26 USC §199A and your clients are going to need your help to qualify.

The Safe Harbor, published by the IRS as “Section 199A, Trade or Business Safe Harbor: Rental Real Estate,” treats rental real estate enterprises as a qualifying trade or business for purposes of 26 USC §199A.

To qualify, your client will need to have:

1. Separate books and records reflecting income and expenses for each rental real estate enterprise;
2. At least 250 hours of rental services performed per tax year (commercial and residential real estate cannot be combined for the 250 hours); and
3. Records regarding hours of services, description of services, dates services were performed, and who performed the services.

Where you come in is with respect to the 250 hours of rental services and records. You see, the owner of the rental property does not have to perform all 250 hours of services themselves. As outlined in the Safe Harbor, rental service hours may be performed by employees, agents, and/or independent contractors. Because real estate brokers are encompassed within this language, your efforts count toward the owner’s ability to qualify for this 20% income tax deduction.

However, simply claiming that you work a lot of hours is not enough. Pursuant to the Safe Harbor, “records are to be made available for inspection at the request of the IRS.” So, you need to revolutionize the brokerage industry by tracking your time while making full activity reports available to your clients. In fact, your client-pitch should now include offering these detailed records on a monthly basis incident to your representation.

Records that should be included in these activity reports include the time you spent advertising to rent/lease the property, negotiating and executing leases, screening tenants, collecting rent, maintaining and repairing the property, managing the property, purchasing materials, and

supervising your employees and independent contractors. However, the time spent in purchasing the property does not count. Your travel time is also always excluded.

A real estate broker has a duty of reasonable care as part of his/her fiduciary duties. Further, a real estate broker can directly offer reasonable care by tracking activity and providing monthly activity reports designed so clients can qualify for a 20% money-saving tax-deduction Safe Harbor.

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