**A Nice Tax Win for Real Estate Investors!**

The Tax Court has ruled in favor of a real estate professional in her dispute with the IRS. In Windham v. Commissioner, TC Memo 2017-68, Ms. Windham was a stock broker who also owned 12 rental properties. She reported income of $285,437 from her stock broker activities. She had a loss of $307,933 from her rental properties (due to vacant properties and depreciation*). Unless she qualified as a real estate professional*, she could not claim any of the rental property losses and she would owe the IRS an additional $124,591.

There are two specific requirements in order to qualify as a real estate professional. The first requirement concerns the amount of time Ms. Windham spent on her rental property activities. Fortunately for her, she maintained very detailed time records to support her claim that she spent 901.25 hours on these properties. The time spent on her stock broker activities was 600 hours. Thus, she satisfied the requirement that her time spent on rental properties was more than the time spent on other business activities (stock broker activities in this case).

She also needed to satisfy the second part of the test to prove that she spent more than 750 hours on her rental properties. Here she made what could have been a very costly mistake on her tax return: She (and her CPA) failed to attach a statement making an election to treat all rental properties as one activity for purposes of the 750 hour rule. As such, she would instead need to show that she spent more than 750 hours on each property, a requirement that she (or most real estate investors) obviously could not satisfy. Her failure to make the election made it much more difficult to pass this requirement. There is relief available IF you qualify (under the material participation requirements). Luckily, the Tax Court found in Ms. Windham’s favor by applying a (complex) seven factor test to show that she complied with the 750 hour requirement for purposes of the tax laws.

As a result, Ms. Windham qualified as a real estate professional and was able to claim all of her rental property losses against the income she earned as a stock broker. If she had failed the real estate professional test, none of her losses would have bene deductible against her stock broker income and she would have owed the IRS a six-figure amount.

**TAX TIP:** If you have multiple rental properties and want to qualify as a real estate professional, make sure your tax professional makes the Section 469 election to treat all rental properties as one activity.

**TAX TIP:** Complete and accurate time records are essential to being able to support your real estate professional claim if audited.

**TAX TIP:** If you file a return jointly with your spouse, if either spouse qualifies as a real estate professional then both spouses will qualify.