



Memorandum

To: Tim Frens
From: Matt Kosciow
Date: March 23, 2009
Re: Real Estate Professional

What are the qualifications of a “Real Estate Professional”?

Per IRS Publication 925, you qualified as a real estate professional for the year if you met both of the following requirements:

- More than half of the personal services you performed in all trades or businesses during the tax year were performed in **real property trades or businesses** in which you materially participated.
- You performed more than 750 hours of services during the tax year in **real property trades or businesses** in which you materially participated.

In determining which services meet the above-mentioned requirements, the following situations need to be taken into account:

- Do not count personal services you performed as an employee in real property trades or businesses unless you were a 5% owner of your employer. You were a 5% owner if you owned (or are considered to have owned) more than 5% of your employer's outstanding stock, outstanding voting stock, or capital or profits interest.
- If you file a joint return, do not count your spouse's personal services to determine whether you met the preceding requirements. However, you can count your spouse's participation in an activity in determining if you materially participated.

What is considered a “real property trade or business” for purposes of qualifying as a real estate professional?

Per IRS Publication 925, a real property trade or business is a trade or business that does any of the following with real property:

- Develops or redevelops it
- Constructs or reconstructs it
- Acquires it

- Converts it
- Rents or leases it
- Operates or manages it
- Brokers it

Although the tax authority does not mention specific examples of industry professionals that perform the above-mentioned trades, it can be reasonably assumed that this list could include:

- Real estate developers
- Construction contractors
- Property managers
- Brokers
- Property owners
- Leasing agents
- Architects

How can an architect qualify under the rules for real estate professional?

The qualifications of the architect can be supported by his role in the construction of the real property.

The architect is typically connected with the construction of the building in such a capacity that he may perform some or all of the following services:

- Obtain bids from contractors
- Award contracts to successful bidders
- Superintend the construction work
- Approve payments to those entitled to them, settle disputes, if any arise, and obtain necessary permits from authorities having jurisdiction.

The architect will sometimes render the owner an opinion as the cost of a building in advance of the commencement of the work, but he is not bound by the estimate unless it is part of the agreement with him.

The architect's fee is can be based upon the total cost of the work and some sort of minimum fee. The total cost comprehends all the material and labor necessary to make the structure complete, plus the contractor's profits, and all articles purchased under his direction, and the fee is bases on the value of new materials. When the architect is not retained to supervise the work, consultation fees and professional advice are to be charged according to the services rendered.