

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:
(202) 622-7900
Refer Reply To:
CC:ITA:2 -PLR-101760-02
Date:
June 13, 2002

Dear _____ :

This letter grants you and _____ an extension of time to make an election to treat capital gains as investment income under §§ 163(d)(1) and (d)(4)(B) of the Internal Revenue Code for the 2000 tax year. You filed the income tax return containing this election late because of conditions beyond your control. The election in that return is made timely by this letter.

FACTS:

The taxpayers are married individuals filing a joint return reporting income and expenses on the cash method of accounting, with a tax year ending December 31. The taxpayers are consultants and investors.

The taxpayers paid investment interest expense during 2000 and have investment interest expense carryovers to 2000 from 1999. Investment income, net of investment expenses, does not exceed the investment interest expense available for 2000. Taxpayers have net capital gains from the disposition of property held for investment. Taxpayers intended to elect to include in investment income enough of the net capital gains from property held for investment to allow a full deduction in 2000 of the available investment interest expense.

The taxpayers encountered circumstances beyond their control in obtaining complete and accurate details of the investment interest paid in 2000. The lending institutions delayed providing the necessary details to the taxpayers regarding the interest and principal payments made by the taxpayers to the lending institutions. Without the precise amount of interest paid to the lending institutions, the 2000 investment interest expense of the taxpayers could not be determined.

The taxpayers finally received the investment interest expense information in November 2001. Before receiving that information, the taxpayers were unable to determine the amount of investment interest expense applicable and deductible for the 2000 tax year. As a result, the taxpayers were unable to determine by the filing date of their return (including the requested extension to October 15, 2001) the net capital gains to be elected as investment income.

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The taxpayers were advised by and relied upon their tax professionals that a complete return could not be filed until all investment interest expense deductions were accurately determined and properly documented. The taxpayers' representative informed _____ of our office that the taxpayers' return was mailed on January 10, 2002. The taxpayers requested a ruling granting them an extension of time to make their late election to treat capital gains as investment income under §§ 163(d)(1) and 163(d)(4)(B).

The taxpayers have made the following representations: The taxpayers' tax liability of all taxable years affected by the election will be no lower than if the election had been timely made. There are no other current or deferred benefits to the taxpayers of electing to treat capital gain as ordinary income in an amount required to absorb the investment interest expense. The taxpayers are not seeking to alter a position that involved an accuracy-related penalty. The taxpayers did not choose to not file an election after being informed of such an election, and are not using hindsight in requesting relief.

ANALYSIS:

The amount allowed an individual as a deduction for investment interest may not exceed the taxpayer's net investment income for the taxable year, under § 163(d)(1). A taxpayer may maximize the investment interest deduction by electing to apply certain net capital gains to be included in investment income, under § 163(d)(4)(B)(iii). This election must be made on or before the due date (including extensions) for filing the income tax return for the taxable year in which the net capital gain is recognized, under § 1.163(d)-1(b) of the Income Tax Regulations. This election is therefore a regulatory election under § 301.9100-1(b) of the Procedure and Administration Regulations.

The Commissioner may grant a reasonable extension of time to make a regulatory election under § 163, under § 1.9100-1(c). The extension may not exceed six months (except in the case of a taxpayer who is abroad). The taxpayers had an extension to file their return to October 15, 2001. Thus the date they actually filed their return, January 10, 2002, is within the six month period allowed for an extension.

Requests for extensions of time for regulatory elections will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, under § 1.9100-3(a). A taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer inadvertently failed to make the election because of intervening events beyond the taxpayer's control, under § 1.9100-3(b)(1)(ii). The taxpayers here did not receive the necessary investment interest expense information until November 2001. Before receiving that information, the taxpayers were unable to determine the amount of investment interest expense applicable and deductible for the 2000 tax year.

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Considering the facts presented, we believe the provisions of § 301.9100-3(b)(3) do not apply in this case. They provide that a taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer

- (i) seeks to alter a position for which an accuracy-related penalty could be imposed under § 662 at the time the taxpayer requests relief and the new position requires a regulatory election for which relief is requested;
- (ii) was fully informed of the required election and related tax consequences, but chose not to file the election; or
- (iii) uses hindsight in requesting relief. If specific facts have changed since the original deadline that make the election advantageous to the taxpayer, the Service will not ordinarily grant relief.

Section 1.9100-3(c)(1) conditions granting an extension of time on the interests of the Government not being prejudiced by the granting of relief. Prejudice would occur if granting relief would give a taxpayer a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made, under § 1.9100-3(c)(1)(i). This is a question of fact, and we accept the taxpayers' representation that their tax liability will not be lower as a result of the extension of time than it would have been if the election had been timely made.

CAVEATS:

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110 of the Internal Revenue Code. We are sending a copy of this letter to the Austin Internal Revenue Service Center to be associated with your income tax return for 2000.

Sincerely,
Thomas D. Moffitt
Branch Chief
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure

cc: