

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B07
PLR-125604-07

Date:
September 10, 2007

Re:
Request For Extension of Time to File Election

Taxpayer =
State =
Owner =
Date 1 =
Firm 1 =
Firm 2 =
Date 2 =
LMSB Official =

Dear

This letter responds to a letter dated May 17, 2007, submitted by Taxpayer requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an election under section 266 of the Internal Revenue Code to capitalize investment interest.

FACTS

Taxpayer is an S corporation headquartered in State. All of the outstanding stock in Taxpayer is owned by Owner.

During the taxable year ending on Date 1, Taxpayer incurred investment interest expense on a loan with respect to real property that Taxpayer reported to Owner on Owner's Form Schedule K-1. This expense was not deductible by Owner due to the investment interest expense limitations under § 163 of the Code, and adversely affected Owner's at-risk basis in Taxpayer. Taxpayer's timely filed federal income tax return for the taxable year ending Date 1 was prepared by Firm 1. However, Owner's individual

income tax return for this period was prepared by Firm 2, who did not advise Owner that Taxpayer could make an election under § 266 to capitalize the investment interest expense. Because Owner's personal income tax situation had no effect on the preparation of Taxpayer's corporate income tax return, Firm 1 did not determine whether the investment interest expense reported on the Form Schedule K-1 issued to Owner would be subject to limitation. Instead, Firm 1 relied upon Owner, who in turn relied on Firm 2, to advise Firm 1 that the investment interest expense would be significantly limited on Owner's personal income tax return and that an election under § 266 would be beneficial to Owner.

During the taxable year ending Date 2, Firm 1 was engaged for the first time to prepare Owner's individual income tax return for the previous taxable year. In the course of preparing Owner's tax return, Firm 1 obtained a copy of Owner's individual income tax return for the taxable year ending Date 1 and became aware of the situation. Firm 1 advised Owner at that time that Taxpayer should make an election under § 266 of the Code, and advised Owner that Taxpayer could have made such an election for the taxable year ending Date 1.

RULING REQUESTED

Taxpayer requests, for the taxable year ended Date 1, an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 266 of the Code to capitalize investment interest expense with respect to real property.

LAW AND ANALYSIS

Section 266 of the Code provides that no deduction shall be allowed for amounts paid or accrued for such taxes and carrying charges as, under regulations prescribed by the Secretary, are chargeable to capital account with respect to property, if the taxpayer elects, in accordance with such regulations, to treat such taxes or charges as so chargeable.

Section 1.266-1(a)(1) of the Income Tax Regulations provides that in accordance with § 266 of the Code, items enumerated in § 1.266-1(b) may be capitalized at the election of the taxpayer. Thus, taxes and carrying charges with respect to property of the type described in § 1.266-1 are chargeable to capital account at the election of the taxpayer, notwithstanding that they are otherwise expressly deductible under provisions of subtitle A of the Code. No deduction is allowable for any items so treated.

Section 1.266-1(b)(1)(ii) of the regulations provides, in part, that the taxpayer may elect, as provided in § 1.266-1(c), to treat as chargeable to capital account either as a component of original cost or other basis, for the purposes of § 1012 of the Code, or as an adjustment to basis, for the purpose of § 1016(a)(1), in the case of real

property, whether improved or unimproved and whether productive or unproductive, interest on a loan (but not theoretical interest of a taxpayer using his own funds) paid or incurred for the development of the real property or for the construction of an improvement or additional improvement to such real property, up to the time the development or construction work has been completed.

Section 1.266-1(c)(2)(ii)(b) of the regulations provides that an election with respect to an item described in § 1.266-1(b)(1)(ii) is effective until the development or construction work described in that subdivision has been completed.

Section 1.266-1(c)(3) of the regulations provides that if the taxpayer elects to capitalize an item or items under § 266 of the Code, such election shall be exercised by filing with the original return for the year in which the election is made a statement indicating the item or items (whether with respect to the same project or different projects) which the taxpayer elects to treat as chargeable to capital account.

Under § 301.9100-1 of the regulations, the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election.

Sections 301.9100-1 through 301.9100-3 of the regulations provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) of the regulations provides that requests for relief under § 301.9100-3 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, and that granting relief will not prejudice the interests of the government.

CONCLUSIONS

Based solely on the facts and the representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 of the regulations have been met. Accordingly, Taxpayer is granted 60 calendar days from the date of this letter to file the election to capitalize the investment interest to the real property under § 266 of the Code with the IRS national office for the taxable year ended Date 1.

Except as specifically ruled upon above, no opinion is expressed or implied concerning the federal income tax consequences of the facts described above. Specifically, no opinion is expressed or implied concerning whether Taxpayer is eligible to capitalize the investment interest expense at issue under § 266 of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to Taxpayer's authorized representatives. A copy of this letter is also being sent to the LMSB Official.

Sincerely,

John P. Moriarty
JOHN P. MORIARTY
Senior Technician Reviewer, Branch 7
Office of Associate Chief Counsel
(Income Tax and Accounting)

Enclosures:

- Copy of this letter
- Copy for section 6110 purposes