

Internal Revenue Service

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LEGEND:

Taxpayer =

Parent =

State =

Year 1 =

Year 2 =

Year 3 =

Date 1 =

Date 2 =

Dear :

This letter responds to a letter dated November 11, 2010, from Taxpayer's representative requesting permission, pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations for an extension of time to make an election under § 263(c) of the Internal Revenue Code for the taxable years ending Date 1 and Date 2.

According to the information submitted, Taxpayer is a privately owned corporation organized under the laws of State on Year 1. Taxpayer is a wholly owned subsidiary of Parent, a non-U.S. corporation.

Taxpayer engages in oil and gas exploration and production throughout the United States. Taxpayer first incurred intangible drilling and development costs (IDCs) in Year 1, and continued to incur IDCs in Year 2. Because Taxpayer did not have an in-house corporate tax department Taxpayer hired an independent tax preparer to file its Year 1 tax return. Unfortunately, the tax preparer did not have experience or knowledge with respect to oil and gas operations and the taxation thereof. As a result, the tax preparer was unaware of the option to elect to currently expense IDCs on Taxpayer's income tax

return for the first tax year that IDCs are incurred and did not inform Taxpayer of this option. Consequently, Taxpayer did not make a timely election to currently expense IDCs on Taxpayer's Year 1 tax return.

In Year 3, Taxpayer engaged an accounting firm to perform a review of the tax accounting for its oil and gas operations. During that review, the accounting firm discovered that Taxpayer had not elected to currently expense IDCs related to oil and gas operations in Year 1. The accounting firm advised Taxpayer to submit a request for relief under § 301.9100-1 for an extension of time to make the election under § 263(c). This request is being made pursuant to such advice.

Taxpayer represents that had it been aware of the ability to currently deduct IDCs, and the need to make an election to deduct such costs on the return for the first taxable year in which it incurred these costs, Taxpayer would have timely made this election on the Year 1 tax return.

Taxpayer represents that granting the relief requested will not result in Taxpayer having a lower tax liability in the aggregate for the tax years affected by the election than Taxpayer would have had if the election had been timely made (taking into account the time value of money). Taxpayer represents that it acted in good faith and that granting relief will not result in prejudice to the interests of the Government.

Law and Analysis

Section 263(c) allows a taxpayer an election, under regulations prescribed by the Secretary, to deduct IDCs. The regulations appear under § 1.612-4. Under § 1.612-4(d), the taxpayer may exercise the election by claiming IDCs as a deduction on the taxpayer's return for the first taxable year in which the taxpayer pays or incurs such costs. No formal statement is necessary.

Under § 301.9100-1(c) of the Procedure and Administration Regulations, the Commissioner in exercising the Commissioner's discretion may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I.

Sections 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a).

The Commissioner will grant requests for relief under § 301.9100-3 when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government. Section 301.9100-3(a). Section 301.9100-3(b) provides, in part, that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief under § 301.9100-3 before the failure to make the regulatory election is discovered by the Internal Revenue Service, and the taxpayer failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election. Section 301.9100-3(c) provides, in part, that the Government's interest is considered prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate of all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

Based solely on the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 through 301.9100-3 have been satisfied. Accordingly, the Commissioner grants Taxpayer an extension of time of 120 days from the date of this letter to make the election under § 263(c) on the Year 1 tax return with the appropriate service center.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and Taxpayer's representative and accompanied by a penalty of perjury statements executed by the appropriate parties. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code and the regulations thereunder. Specifically, we express no opinion concerning whether Taxpayer satisfies the requirements of § 263(c) and § 1.162-4.

This letter ruling is directed only to the taxpayer who requested it. Under § 6110(k)(3), a letter ruling may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this ruling letter to your authorized representative. We also are sending a copy of this letter to the appropriate Industry Director, LB&I. A copy of this ruling must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their

returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By:

Jaime C. Park
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):
copy of this letter
copy for section 6110 purposes