

Taxpayer is a B real estate builder and developer. Taxpayer files a consolidated federal income tax return.

Taxpayer sold the initial home in one or more communities under development in the taxable year beginning Date 3 and ending Date 1. Taxpayer used the alternative cost method described in section 4 of Rev. Proc. 92-29 to compute the gain or loss on the homes sold in those communities during the year on its federal income tax return for the taxable year ending Date 1.

Taxpayer filed its original federal income tax return for the taxable year ending Date 1 on Date 4. Taxpayer intended to determine the estimated cost of common improvements with regard to the ten-taxable year horizon as defined in section 2.02 of Rev. Proc. 92-29. Taxpayer attached the following to its return for the taxable year ending Date 1: (i) a request to use the alternative cost method on a project-by-project basis and (ii) a Form 921, *Consent to Extend the Time to Assess Income Tax*, extending the period of limitation on the assessment of tax with respect to the use of the alternative cost method on a project-by-project basis. Taxpayer failed to file a duplicate of the request to use the alternative cost method with the A director for the region of its principal place of business on or before the due date of the return (including extensions) for the taxable year ending Date 1. Taxpayer's C completed the duplicate request, but failed to timely mail it. Taxpayer was in the process of D at the time the request was due and inadvertently misplaced the request. Taxpayer's C discovered this oversight on Date 5.

Taxpayer represents that, other than timely filing a duplicate copy of the request with the A director, it qualifies to use the alternative cost method.

LAW

Rev. Proc. 92-29, 1992-1 C.B. 748 provides rules for the treatment of common improvement costs and an "automatic procedure" for developers to follow to use the alternative cost method. Generally, consent to use that method is conditioned on the following:

- (1) The developer must be contractually obligated or required by law to provide the common improvements, and the cost of the common improvements must not be properly recoverable through depreciation by the developer.
- (2) The developer must file a request to use the alternative cost method on a project-by-project basis in accordance with the procedures set forth in section 6 of Rev. Proc. 92-29. These procedures include a requirement to file the request with the district director for the internal revenue district in which is located the principal place of business of the person required to make the return on or before the due date of the developer's original federal income tax return (determined with regard to extensions of time) for the taxable year in which the first benefitted property in the project is sold.

- (3) The developer must sign a consent extending the period of limitation on the assessment of income tax with respect to the use of the alternative cost method on a project-by-project basis as described in section 7 of Rev. Proc. 92-29.
- (4) The developer must file an annual statement for each project for which the developer has received permission to use the alternative cost method in accordance with section 8 of Rev. Proc. 92-29.
- (5) The developer must file a supplemental request for each project if required pursuant to section 9 of Rev. Proc. 92-29.

Taxpayer requests permission with this ruling request to file a copy of the request to use the alternative cost method with the A director for the region of its principal place of business.

Section 301.9100-1(c) provides that 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 certain regulatory elections. Section 301.9100-1(b) defines a "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice or announcement published in the Internal Revenue Bulletin.

Sections 301.9100-1 through 301.9100-3 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) provides that requests for extensions of time for regulatory elections (other than automatic changes covered under section 301.9100-2) will be granted when the taxpayer provides evidence (including affidavits described in the regulations) 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.

Section 301.9100-3(b)(1) provides that a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer --

- (i) requests relief before the failure to make the regulatory election is discovered by the Internal Revenue Service (IRS);
- (ii) failed to make the election because of intervening events beyond the taxpayer's control;
- (iii) failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election;
- (iv) reasonably relied on the written advice of the IRS; or
- (v) reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(b)(3) provides that a taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer --

(i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested

(ii) was informed in all material respects 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 a taxpayer, the IRS will not ordinarily grant relief.

Section 301.9100-3(c)(1) provides that the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief. The interests of the Government are prejudiced if granting relief would result in a taxpayer having 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. The interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

Section 301.9100-3(c)(2) provides special rules for accounting method regulatory elections. Section 301.9100-3(c)(2) provides that the interests of the Government are deemed prejudiced, except in unusual or compelling circumstances, if the accounting method regulatory election for which relief is requested is subject to the advance consent procedures for method changes, requires a § 481(a) adjustment, would permit a change from an impermissible method of accounting that is an issue under consideration by examination or in any other setting, and the change would provide a more favorable method or more favorable terms and conditions than if the change were made as part of an examination, or provides a more favorable method of accounting or more favorable terms and conditions if the election is made by a certain date or taxable year.

RULING

Based upon our analysis of the facts and representations provided, Taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the Government. Therefore, the requirements of §§ 301.9100-1 and 301.9100-3 have been met.

Taxpayer is granted an extension of 60 days from the date of this ruling to file the copy of the request to use the alternative cost method with the A director for the region of its principal place of business for its taxable year ending Date 1.

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. No opinion is expressed as to the federal tax treatment of the transaction under any other provisions of the Internal Revenue Code and the Treasury Regulations that may be applicable or under any other general principles of federal income taxation. This letter ruling is only applicable to matters under our jurisdiction. See Rev. Proc. 2018-1, 2018-1 I.R.B. 1, *13-*14, Section 3. No opinion is expressed as to the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above ruling. In particular, no opinion is expressed as to whether Taxpayer qualifies to use the alternative cost method.

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

A copy of this letter 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.

The rulings contained in this letter are based upon information and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. 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.

Enclosed is a copy of this letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110.

We are sending a copy of this letter to the appropriate operating division director.

Sincerely,

Bridget E. Tombul
Branch Chief, Branch 2
Office of the Associate Chief Counsel
(Income Tax & Accounting)

Enc. Copy for § 6110 purposes