Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.
Telephone Number:

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June 17, 2026

LEGEND

Taxpayer 1	=
Taxpayer 2	=
Year 1	=
Year 2	=
Year 3	=
Date 1	=
Date 2	=
Date 3	=
Property	=
Paid Preparer 1	=
Paid Preparer 2	=

Dear :

This letter responds to a request for a private letter ruling filed by Taxpayer 1 and Taxpayer 2 (collectively, Taxpayers) with the Internal Revenue Service (Service). In the letter ruling request and subsequent submissions, Taxpayers seek an extension of time for Taxpayers to elect to capitalize carrying costs under § 266[1], effective for Years 1-2 and the beginning of Year 3 to Date 1. The request is made in accordance with §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations. Taxpayers' request was filed with our office on Date 2.

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[1] Unless otherwise specified, all "section" or "§" references are to sections of the Internal Revenue Code or the Income Tax Regulations (26 CFR part 1).

FACTS

Taxpayer 1, an individual, purchased Property on Date 3. For Years 1-2, Taxpayer 1 incurred carrying costs to purchase and renovate Property. For these years, Taxpayer 1 prepared his own tax returns. Taxpayer 1 represents that he paid these carrying costs and deducted them on his tax returns for Years 1-2.

For Year 3, Taxpayer 1 and Taxpayer 2 were married individuals who filed their tax returns jointly. For Year 3, Taxpayers incurred carrying costs to renovate Property. On Date 3, Property was placed into service. Taxpayers hired Paid Preparer 1 to file their return for Year 3. Taxpayers represent that they paid these carrying costs and deducted them on their tax returns for Year 3.

On Date 3, Taxpayers engaged Paid Preparer 2. Paid Preparer 2 identified errors in Taxpayers' Year 3 return filed. Paid Preparer 2 began preparing an amended tax return for Year 3. During this process, Paid Preparer 2 informed Taxpayers that a § 266 election had not been made for Years 1-3. Taxpayers intended to capitalize carrying costs to Property using a § 266 election.

LAW AND ANALYSIS

Sections 301.9100-1 through 301.9100-3 of the Procedure and Administration 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 301.9100-1(b) defines the term "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, procedure, notice or announcement published in the Internal Revenue Bulletin. 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 301.9100-3(a) provides extensions of time to make a regulatory election under Code sections other than those for which § 301.9100-2 expressly permits automatic extensions. 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.

Section 301.9100-3(b)(1) states that a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer: (1) requests relief before the failure to make the regulatory election is discovered by the Service, (2) failed to make the election because of intervening events beyond the taxpayer's control, (3) failed to make the election because, after exercising due diligence, the taxpayer was unaware of the necessity for the election, (4) reasonably relied on the written advice of the Service, or (5) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make the election.

Under § 301.9100-3(b)(3), a taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer: (1) 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 (taking into account § 1.6664-2(c)(3)) and the new position requires or permits a regulatory election for which relief is requested, (2) was informed in all material respects of the required election and related tax consequences, but chose not to file the election, or (3) uses hindsight in requesting relief. If specific facts have changed since the original deadline that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief.

Section 301.9100-3(c)(1) provides that the Commissioner will grant a reasonable extension of time only when the interests of the Government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(1)(i) provides, in part, that the interests of the government are prejudiced if granting relief would result in the 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 (taking into account the time value of money). Section 301.9100-3(c)(1)(ii) provides, in part, that 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 these criteria, the interests of the government are not prejudiced in this case.

Section 266 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) provides that in accordance with § 266, items enumerated in § 1.266-1(b)(1) may be capitalized at the election of the taxpayer. Thus, taxes and carrying charges with respect to the property 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) provides that the taxpayer may elect, as provided in § 1.266-1(c), to treat items enumerated in § 1.266-1(b)(1) which are otherwise expressly deductible under the provisions of Subtitle A of the Code as chargeable to capital account either as a component of original cost or other basis, for the purposes of § 1012, or as an adjustment to basis, for purposes of § 1016(a)(1). The items thus chargeable to capital account in the case of real property, whether improved or unimproved and whether productive or unproductive: (a) interest on a loan (but not theoretical interest of a taxpayer using his own funds); (b) taxes of the owner of such real property measured by compensation paid to his employees; (c) taxes of such owner imposed on the purchase of materials, or on the storage, use, or other consumption of materials; and (d) other necessary expenditures, 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. The development or construction work with respect to which such items are incurred may relate to unimproved and unproductive real estate whether the construction work will make the property productive of income subject to tax (as in the case of a factory) or not (as in the case of a personal residence), or may relate to property already improved or productive (as in the case of a plant addition or improvement, such as the construction of another floor on a factory or the installation of insulation therein).

Section 1.266-1(c)(1) provides that if for any taxable year there are two or more items of the type described in § 1.266-1(b)(1), which relate to the same project to which the election is applicable, the taxpayer may elect to capitalize any one or more of such items even though he does not elect to capitalize the remaining items or to capitalize items of the same type relating to other projects. For purposes of § 1.266-1(b)(1)(ii), a project means a particular development of, or construction of an improvement to, real property. Under § 1.266-1(c)(2)(ii), an election with respect to an item described in § 1.266-1(b)(ii) is effective until the development or construction worked described in that subdivision has been completed.

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

CONCLUSION

Based on the facts and representations submitted, we conclude that Taxpayers acted reasonably and in good faith and granting relief will not prejudice the interests of the government. Accordingly, the requirements of §§ 301.9100-1 and 301.9100-3 have been met.

Taxpayers are granted an extension of 60 days from the date of this ruling to file the statement required by § 1.266-1(c)(3).

The ruling contained in this letter is based upon information and representations submitted by the taxpayers and accompanied by penalty of perjury statements executed by the appropriate parties. This office has not verified any of the materials submitted in support of the request for a ruling and the information materials are subject to verification on examination.

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. In particular, no opinion is expressed on whether (a) Taxpayers are otherwise eligible or otherwise qualified to make a § 266 election; and (b) the carrying costs are properly treated, in whole or part, as otherwise deductible.

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

A copy of this ruling should be attached to Taxpayers' federal tax returns for the tax years affected. 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,

Andrew S. Braden
Senior Reviewer, Branch 6
(Income Tax & Accounting)