Internal Revenue Service

Number: **201319008**
Release Date: 5/10/2013

Index Number: 9100.05-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number/Fax Number:

Refer Reply To:
CC:ITA:6
PLR-137244-12

Date: February 6, 2013

In re: Request for Extension of Time to File Election to Capitalize Items Under § 266.

Legend

Partnership =

A =

B =

C =

D =

Preparer =

Tax Professional =

Date 1 =

Date 2 =

Date 3 =

Month =

State =---

Dear :

This letter is in reply to a private letter ruling request dated August 28, 2012, filed by Partnership. Partnership requests an extension of time under § 301.9100-1(c) of the Procedure and Administration Regulations to file an election under § 266 of the Internal Revenue Code to capitalize carrying charges. This request was made in accordance with § 301.9100-3.

Partnership is a limited liability company organized under the laws of State. Partnership is treated as a partnership for federal tax purposes. All of the outstanding partnership interests of Partnership are owned by four nonresident alien individual taxpayers A, B, C and D.

During the taxable years ending Date 1 and Date 2, Partnership incurred interest, property taxes, and other carrying charges ("Carrying Charges") with respect to unimproved and unproductive real property. On its original tax return for the taxable year ending Date 1, Partnership deducted the Carrying Charges. Partnership filed an amended return for the taxable year ending Date 1 on which it capitalized Carrying Charges. On its original tax return for the taxable year ending Date 2, Partnership deducted the Carrying Charges, except for all property taxes paid that year, which it capitalized. No election was made to capitalize these taxes under § 266. The original tax returns for the year ending Date 1 and Date 2 were prepared by Preparer. The amended return for the taxable year ending Date 1 was prepared by Tax Professional.

Partnership relied on Preparer to advise it regarding any elections that should be made in computing taxable income on its federal tax return for the taxable years ending Date 1 and Date 2. Further, taking into account only facts that were known at the time Partnership filed its federal tax returns for these taxable years, Partnership would have made the § 266 elections to capitalize the Carrying Charges, had Partnership been advised by Preparer of the tax consequence of failing to make the § 266 elections. No facts have changed since the due date for making the elections that would make the elections more advantageous to Partnership than they would have been if the elections had been timely made.

Partnership engaged Tax Professional in Month. During its engagement Tax Professional informed Partnership of the advantages of making an election to capitalize the Carrying Charges under § 266 for the taxable years ending Date 1 and Date 2. Further, because A, B, C and D were not aware of a requirement to file federal income tax returns and did not timely file federal income tax returns for taxable years ending Date 1 and Date 2, Tax Professional informed them of the requirement to file federal income tax returns. A, B, C and D filed their federal income tax returns for taxable

years ending Date 1 and Date 2 on Date 3. A, B, C and D's tax returns were prepared by Tax Professional.

Section 266 provides that a taxpayer may elect to capitalize amounts paid or accrued for certain taxes and carrying charges chargeable to capital account with respect to property, under regulations prescribed by the Secretary.

Section 1.266-1(a)(1) of the Income Tax Regulations provides that items enumerated in § 1.266-1(b) may be capitalized at the election of the taxpayer. Thus, taxes, interest and other 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)(i) provides 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, or as an adjustment to basis, for the purpose of § 1016(a)(1), in the case of unimproved and unproductive real property: annual taxes, interest on a mortgage, and other carrying charges.

Section 1.266-1(c)(2)(i) provides that an election with respect to an item described in § 1.266-1(b)(1)(i) is effective only for the year in which it is made. 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 with the original return for the year in which the election is made a statement indicating the item or items which the taxpayer elects to treat as chargeable to capital account.

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.

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.

Requests for relief under § 301.9100-3 will be granted when a taxpayer provides evidence to establish to the satisfaction of the Commissioner (1) that the taxpayer acted reasonably and in good faith, and (2) that granting relief will not prejudice the interests of the Government. See § 301.9100-3(a).

A taxpayer is generally deemed to have acted reasonably and in good faith if the taxpayer requests relief before the failure to make the regulatory election is discovered by the Internal Revenue Service. See § 301.9100-3(b). However, the taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer 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. Additionally, if the taxpayer was informed in all material respects of the required election and related tax consequences but chose not to file the election, or uses hindsight in requesting relief, the taxpayer ordinarily will not be considered to have acted reasonably and in good faith. See § 301.9100-3(b)(3).

The interests of the Government are prejudiced if granting relief would result in taxpayers affected by the election having a lower tax liability in the aggregate. See § 301.9100-3(c)(i). In addition, the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made is closed by the period of limitations on assessment under § 6501(a). See § 301.9100-3(c)(ii).

Section 6501(a) provides the period of limitations for assessing any tax imposed by Title 26 of the United States Code, including tax attributable to partnership and affected items. See Bufferd v. Commissioner, 506 U.S. 523, 527 (1993). This period runs from the filing date of a tax return rather than from the filing date of a pass-through entity information return (such as a partnership return). Id. In this case, A, B, C and D's tax returns for the taxable years ending Date 1 and Date 2 remain open.

Based solely on the facts and representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, we hereby grant an extension of time for Partnership to file the necessary statement indicating the items which Partnership elects to treat as chargeable to capital account for the taxable years ending Date 1 and Date 2. This extension shall be for a period of 30 days from the date of this ruling. Please attach a copy of this ruling to the Partnership's amended returns for the taxable years ending Date 1 and Date 2.

The ruling contained in this letter is based upon information and representations submitted by Partnership and accompanied by a penalty of perjury statement executed by the appropriate party. Further, this ruling is null and void should any of Partnership's partners take a position on any return that is inconsistent with the requested relief being granted. While this office has not verified any of the materials submitted in support of the request for rulings, such material is 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. Specifically, we express no opinion as to whether Partnership's items are properly chargeable to capital account under § 266.

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

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to Partnership's authorized representative.

Sincerely,

ROY HIRSCHHORN
Chief, Branch 6
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure:
copy for section 6110 purposes