

Internal Revenue Service

Number: **202425006**

Release Date: 6/21/2024

Index Number: 9100.00-00, 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:

Refer Reply To:

CC:ITA:B07

PLR-118212-23

Date:

March 19, 2024

Re: Request for Extension of Time to Make the Election under § 266 to Capitalize Interest to Personal Property

Legend

Dear :

This letter refers to a letter dated September 20, 2023, and supplemental information, submitted by Parent on behalf of its subsidiary, Taxpayer, requesting an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election under § 266 of the Internal Revenue Code to capitalize interest to personal property during the Taxable Year. This letter ruling is being issued electronically, as permissible under section 7.02(5) of Rev. Proc. 2023-1, 2023-1 I.R.B. 1, 35.

FACTS

Parent represents that the facts are as follows:

Parent is the common parent of an affiliated group of corporations that files a consolidated federal income tax return on Form 1120, *U.S. Corporation Income Tax Return*, that includes Taxpayer. Taxpayer uses a 52–53-week taxable year ending on the Saturday nearest to January 31, and an overall accrual method of accounting.

On Date1, Taxpayer engaged Firm1 to provide advice related to making an election to capitalize interest to personal property under § 266 and Treas. Reg. § 1.266-1(b)(1)(iii) of the Income Tax Regulations. Firm1 determined that Taxpayer was eligible to make the election for the Taxable Year and provided its conclusions to Taxpayer in a deliverable package, which included a technical memorandum, computation supporting the amount of the capitalizable interest, the election statement required by Treas. Reg. § 1.266-1(c)(3), and instructions indicating the election statement should be attached to Taxpayer's federal income tax return for the Taxable Year.

Taxpayer engaged Firm2 to review and sign the Taxpayer's federal income tax return for the Taxable Year as preparer, but Taxpayer was responsible for actually filing the return. In reviewing the return and associated statements provided by Taxpayer, Firm2 confirmed that Taxpayer complied with the substantive requirements of the election by capitalizing interest to personal property under § 266, and that the election statement was prepared correctly. Firm2 informed Taxpayer that the election statement should be attached to the return and Taxpayer confirmed that it would attach the election statement prior to filing Taxpayer's federal income tax return.

However, when timely filing the return, Taxpayer inadvertently omitted the election statement. As a result, no election statement was attached to Taxpayer's timely filed federal income tax return for the Taxable Year.

In Date2, as part of Taxpayer's financial statement audit, Firm2 discovered that the election statement was not included with Taxpayer's return. Firm2 immediately brought it to Taxpayer's attention and informed Taxpayer that it must seek relief under §§ 301.9100-1 and 301.9100-3 for an extension of time to properly file the election statement to capitalize interest to personal property. Shortly thereafter, Taxpayer requested that Firm2 commence preparation of this ruling request.

RULING REQUESTED

Accordingly, Parent requests an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 to make an election under § 266 to capitalize interest to personal property.

LAW AND ANALYSIS

Section 266 provides that no deduction shall be allowed for amounts paid or incurred 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 paragraph (b)(1) of this section may be capitalized at the election of the taxpayer. Thus, taxes and carrying charges with respect to property of the type described in this section are chargeable to capital account at the election of the taxpayer, notwithstanding that they are otherwise expressly deductible under provision of Subtitle A of the Code. No deduction is allowable for any items so treated.

Section 1.266-1(b)(1) provides in part that the taxpayer may elect, as provided in paragraph (c) of this section, to treat the items enumerated in this subparagraph 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 purposes of section 1012, or adjustment to basis, for the purposes of section 1016(a)(1). The items thus chargeable to capital account are, in the case of personal property, interest on a loan to purchase such property or to pay for transporting or installing the same. Section 1.266-1(b)(1)(iii)(b).

Section 1.266-1(c)(3) provides that if the taxpayer elects to capitalize an item or items under this section, such election shall be exercised by filing with 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 different projects) which the taxpayer elects to treat as chargeable to capital account.

Under § 301.9100-1(a), the Commissioner of Internal Revenue 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 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides rules for requesting extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) 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 the grant of relief will not prejudice the interests of the government.

CONCLUSION

Based solely on the facts and the representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Parent is granted an extension of 60 calendar days from the date of this letter ruling to make the election under § 266, on behalf of Taxpayer, to capitalize interest to personal property for the Taxable Year. This election must be made by Parent filing an amended consolidated federal income tax return for the Taxable Year, with a written statement indicating that Taxpayer is electing to capitalize interest to personal property under § 266.

A copy of this letter should be attached to the relevant filing. A taxpayer filing its federal return electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Except as specifically set forth above, we express no opinion concerning the federal income tax consequences of the facts described above under any other provisions of the Code. Specifically, no opinion is expressed or implied on whether any interest on personal property is eligible for the election under § 266.

The rulings contained in this letter are based upon information and representations submitted by Parent 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 ruling, it is subject to verification on examination.

This letter ruling is directed only to the taxpayer requesting 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, we are sending a copy of this letter ruling to Taxpayer's authorized representatives. We are also sending a copy of this letter ruling to the appropriate IRS operating division director.

Sincerely,

Deena M. Devereux

DEENA M. DEVEREUX
Branch Chief, Branch 7
(Income Tax & Accounting)

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

cc: