

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:IT&A:5-PLR-101051-00

Date:

April 24, 2000

TY:

Legend

Taxpayer =
EIN =
Firm =
Date x =

Dear :

This responds to a letter dated January 6, 2000, submitted by your authorized representative, requesting an extension of time, under section 301.9100 of the Procedure and Administration Regulations, for taxpayer to make an election to use the alternative cost method of accounting in conformity with the requirements of Rev. Proc. 92-29, 1992-1 C.B. 748. The facts are as follows:

Taxpayer is an accrual-basis partnership engaged in the business of real estate development. Taxpayer's federal partnership return for the year ended December 31, 1998, was prepared by Firm. The request to use the alternative cost method under Rev. Proc. 92-29 was prepared and included in the 1998 partnership return filed with the Internal Revenue Service Center for the appropriate location.

Taxpayer represents that, due to an inadvertent administrative error, a duplicate request was not received from Firm and therefore filed separately with the district director on or before the filing deadline. Taxpayer's Tax Matters Partner detected this error shortly after Date x, and consequently, this request for relief was filed.

Rev. Proc. 92-29 allows a developer of real estate to automatically elect the alternative cost method with respect to its projects. This alternative cost method allows

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a developer to include in the basis of properties sold their allocable share of the estimated cost of common improvements without regard to whether the costs are incurred under section 461(h), subject to certain limitations.

Under section 6.01 of Rev. Proc. 92-29, the developer must file a request with the appropriate District Director for the internal revenue district in which is located the principal place of business or the principal office or agency. The request must be filed 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. In addition, the developer must also attach a copy of the request to its timely filed original federal income tax return for the taxable year.

LAW AND ANALYSIS

Section 301.9100-1 of the regulations provides in part that the regulations under this section, and §§ 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. The regulations under this section and § 301.9100-2 also provide an automatic extension of time to make certain statutory elections. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) of the regulations provides in part that requests for relief subject to this section will be granted when the taxpayer provides the 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.

Section 301.9100-3(b)(1) of the regulations provides in part that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief under this section before the failure to make the regulatory election is discovered by the Internal Revenue Service (IRS), and failed to make the election because of intervening events beyond the taxpayer's control.

Section 301.9100-3(b)(3) of the regulations provides in part that a taxpayer is deemed to have not 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 section 6662 at the time the taxpayer requests relief;
- 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

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since the due date for making the election that make the election advantageous to a taxpayer, the IRS will not ordinarily grant relief. In such a case, the IRS will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

Section 301.9100-3(c) of the regulations provides in part that 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 (taking into account the time value of money). This section also provides that the interests of the government are 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 section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

Based upon our analysis of the facts, the taxpayer in the present case acted reasonably and in good faith, and granting relief will not prejudice the interests of the Government, and therefore the requirements of § 301.9100 have been met.

The failure to file a copy of the request for election was an inadvertent error on the part of Taxpayer, and Taxpayer did not affirmatively choose not to file the election. Taxpayer is not seeking to alter a return position or to use hindsight to request relief. Finally, Taxpayer acted promptly in filing its request for relief, before the IRS discovered the failure to make a regulatory election. Therefore, Taxpayer did not act unreasonably or in bad faith.

Furthermore, Taxpayer's tax liability will not be altered by granting the request for an extension of time to file a request for the alternative cost method with the district director, nor will any closed tax years be affected. Therefore, the interests of the government have not been prejudiced by granted the requested relief.

Because Taxpayer acted reasonably and in good faith, and because the interests of the government will not be prejudiced if the request for relief is granted, Taxpayer is granted an extension of 45 days from the date of this ruling to file with the district director a request to use the alternative cost method under Rev. Proc. 92-29.

The ruling contained in this letter is based upon facts and representations submitted by the taxpayer. Except as specifically addressed herein, no opinion is expressed regarding the tax treatment of the subject transaction under the provisions of any other sections of the Code or regulations that may be applicable thereto. 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.

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In accordance with the power of attorney on file in our office, a copy of this letter is being sent to your representative. A copy of this letter ruling should be attached to the returns, schedules, and forms filed in connection with making the election under Rev. Proc. 92-29 when such forms are filed.

Sincerely,

Douglas A. Fahey
Acting Chief, Branch 5
(Income Tax & Accounting)