Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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, ID No.

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Date:
April 02, 2014

LEGEND:

Taxpayers:	=
X	=
Year	=
Date 1	=
Date 2	=
Date 3	=
a	=

Dear :

This letter responds to a letter dated Date 3, from Taxpayers' representative requesting permission, pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations for an extension of time to make an election under § 59(e) of the Internal Revenue Code and § 1.59-1(b)(1) of the Income Tax Regulations for Year. By making an election under § 59(e), Taxpayers' are able to capitalize intangible drilling and development costs (IDCs) for which an election was properly made under § 263(c) and § 1.612-4 of the Income Tax Regulations.

The Taxpayers filed a joint federal income tax return for Year. During Year, the Taxpayers owned interests in various flow-through and disregarded entities that incurred IDCs and made proper elections to expense the IDCs under § 263(c).

The Taxpayers' federal income tax return is prepared annually by the tax department of X, an entity in which the Taxpayers have an ownership interest. The Taxpayers have instructed the employees of X that it is their preference where possible to delay recognition of expenses that would create tax preference items rather than unnecessarily incurring alternative minimum tax (AMT). Accordingly, prior to Year, for each tax year that the Taxpayers incurred IDCs for which a § 263(c) election was made at the entity level, the Taxpayers made a corresponding § 59(e) election to capitalize

and amortize any portion of the IDCs that would create an AMT preference item if currently expensed by the Taxpayers.

During Year, the Taxpayers incurred IDCs from their various passthrough and disregarded entity investments and intended to make a timely § 59(e) election. The Taxpayer's representatives at X had made § 59(e) elections with respect to IDCs incurred in prior tax years and understood that the Taxpayers were required to make an election to capitalize IDCs on the Taxpayers' timely filed federal income tax return by attaching an election statement to the return.

The Tax Director of X oversaw the preparation and filing of the Taxpayers' Year federal income tax return. At the time this return was filed, the Tax Director had worked at X and had overseen the preparation of the Taxpayers' federal income tax returns for a years. The Tax Director understood the Taxpayers' intent to delay recognition of currently deductible IDCs. He also understood that the Taxpayers incurred IDCs in Year for which a proper § 263(c) election was made and that failure to make a § 59(e) election in the time and manner prescribed under § 1.59-1(b)(1) would result in the Taxpayers' recognizing currently deductible IDCs in Year.

Despite this knowledge, the Tax Director and other X employees inadvertently failed to make the election to capitalize and amortize a portion of the IDCs on the Taxpayers' timely filed federal income tax return as required by § 1.59-1(b)(1). This inadvertent omission was solely the result of the significant time pressure that X employees suffered in attempting to timely file the Taxpayers' federal income tax return by including the Taxpayers' share of income, deductions, and credits from the Taxpayers' business interests, many of which were not reported to the Taxpayers until several weeks prior to the extended due date of the Taxpayers' Year federal income tax return.

On Date 2, the Tax Director and other X employees discovered that the Taxpayers had inadvertently failed to make a proper election to capitalize and amortize a portion of IDCs per § 1.59-1(b)(1) while reviewing the Taxpayers' Year federal income tax, approximately two weeks after timely filing the Year federal income tax return by the extended Date 1 deadline. The Taxpayers now seek an extension of time to file the a late § 59(e) election for Year under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

The Taxpayers represent that granting the relief requested will not result in the Taxpayers having a lower tax liability in the aggregate for the tax years affected by the election than the Taxpayers would have had if the election had been timely made (taking into account the time value of money). The Taxpayers also represent that they acted in good faith and that granting relief will not result in prejudice to the interests of the Government.

Law and Analysis

Section 263(c) allows a taxpayer an election, under regulations prescribed by the Secretary, to deduct IDCs. The regulations appear under § 1.612-4. Under § 1.612-4(d), the taxpayer may exercise the election by claiming IDCs as a deduction on the taxpayer's return for the first taxable year in which the taxpayer pays or incurs such costs. No formal statement is necessary, but if the taxpayer fails to deduct the IDCs, the taxpayer is deemed to have elected to recover such costs through depletion to the extent that they are not represented by physical property and through depreciation to the extent that they are represented by physical property.

Section 59(e)(1) allows a taxpayer to deduct ratably over a specified period any qualified expenditure to which an election under § 59(e)(1) applies.

Section 59(e)(2) includes in the definition of "qualified expenditure," any amount which, but for an election under § 59(e), would have been allowable as a deduction (determined without regard to § 291) for the taxable year in which paid or incurred under § 263(c) (relating to intangible drilling and development expenditures).

Section 59(e)(1) allows the taxpayer to deduct ratably over the 10 year period beginning with the taxable year in which such expenditure was made or, in the case of a qualified expenditure for intangible drilling and development expenditures, to deduct the expenditure ratably over the 60 month period beginning with the month in which such expenditure was paid or incurred.

Section 59(e)(3) specifically prohibits the deduction of the qualified expenditures under any other section of the Code if this option is elected. Section 59(e)(4)(A) allows a taxpayer to make an election under § 59(e)(1) for any portion of any qualified expenditure.

Treas. Reg. § 1.59-1(b)(1) prescribes the time and manner of making the § 59(e)(1) election. According to § 1.59-1(b)(1), an election under § 59(e) shall only be made by attaching a statement to the taxpayer's income tax return (or amended return) for the taxable year in which the amortization of the qualified expenditures subject to the § 59(e) election begins. The taxpayer must file the statement no later than the date prescribed by law for filing the taxpayer's original income tax return (including any extensions of time) for the taxable year in which the amortization of the qualified expenditures subject to the § 59(e) election begins.

Under § 301.9100-1(c) the Commissioner in exercising the Commissioner's discretion may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I.

Sections 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. Section 301.9100-1(a).

Section 301.9100-2 allows automatic extensions of time for making certain elections. Section 301.9100-3 allows extensions of time for making elections that do not meet the requirements of § 301.9100-2.

The Commissioner will grant requests for relief under § 301.9100-3 when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) 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(a). Section 301.9100-3(b) provides, in part, that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief under § 301.9100-3 before the failure to make the regulatory election is discovered by the Internal Revenue Service, and the taxpayer failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election. Section 301.9100-3(c) provides, in part, that the Government's interest is considered prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate of 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).

Based solely on the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 through 301.9100-3 have been satisfied. Accordingly, the Commissioner grants the Taxpayers an extension of time of 120 days from the date of this letter to make the election under § 59(e) on the Taxpayers' federal income tax return for Year with the appropriate Service Center.

The rulings contained in this letter are based upon information and representations submitted by the Taxpayers and the Taxpayers' representative and accompanied by a penalty of perjury statements executed by the appropriate parties. 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. Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code and the regulations thereunder.

Specifically, we express no opinion concerning whether the Taxpayers satisfy the requirements of § 263(c) or § 59(e).

This letter ruling is directed only to the taxpayer who requested it. Under § 6110(k)(3), a letter ruling 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 ruling letter to your authorized representative. We also are sending a copy of this letter to the appropriate Industry Director, LB&I. A copy of this ruling 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.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: _____
Patrick S. Kirwan
Acting Senior Technician Reviewer
Branch 6
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: