Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
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CC:ITA:B06
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LEGEND

Taxpayer =

Country A =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Lot A =

CPA Firm =

Dear

This letter responds to a request for an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to elect to capitalize interest pursuant to § 266 of the Internal Revenue Code for Years 1–6.

FACTS

Taxpayer represents the following facts:

Taxpayer is an individual who has citizenship in both the United States and Country A. Taxpayer presently resides in Country A.

Although Taxpayer was born in the United States and is a citizen of the United States, he has spent the majority of his adult life in Country A. Taxpayer did not realize until recently that he had the obligation to pay Federal income taxes to the United States while he resided in Country A. Consequently, Taxpayer has never filed a United States tax return during the time that he has resided in Country A. Now that Taxpayer has become aware of his obligation to file United States tax returns, he is in the process of filing these returns with the Internal Revenue Service for all previous years for which he was required to file such returns.

In Year 1, Taxpayer acquired real property, Lot A, which is located in Country A. Taxpayer funded the acquisition of Lot A with a loan (the acquisition loan). In Years 1–6, Taxpayer represents that he paid interest on this acquisition loan and that this interest is deductible for Federal income tax for purposes of § 266. However, no interest was deducted by Taxpayer. Years 1–6 occurred during the time in which Taxpayer resided in Country A and did not realize that he had an obligation to file United States tax returns.

Currently, while preparing to file the aforementioned tax returns, Taxpayer was advised by an international CPA Firm that he could make an election pursuant to § 266 to capitalize the interest paid on the acquisition loan in Years 1–6 into the value of Lot A. Taxpayer had not timely made the election under § 266 to capitalize the interest paid on the acquisition loan for each of Years 1–6 because he had not realized that he had the obligation to file United States tax returns or pay income tax to the United States. Further, as a nontax professional, Taxpayer was not aware of the § 266 election until he was advised by the international CPA Firm.

RULING REQUESTED

Taxpayer requests, for Years 1–6, an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 to file an election under § 266 to capitalize interest payments on an acquisition loan with respect to real 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) of the Income Tax Regulations provides that in accordance with § 266, items enumerated in § 1.266-1(b) may be capitalized at the election of the taxpayer. Thus, taxes and 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 provision of subtitle A of the Code. No deduction is allowable for any items so treated.

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 (whether with respect to the same project or different projects) which the taxpayer elects to treats as chargeable to capital account.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I, provided that the taxpayer acted reasonably and in good faith and granting relief will not prejudice the interests of the Government. 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. An “election” includes an application for relief in respect of tax as well as a request to adopt, change, or retain an accounting method.

Section 301.9100-3 provides extensions of time to make regulatory elections under Code sections other than those for which § 301.9100-2 expressly permits automatic extensions.

Section 301.91000-3(a) provides in part that the Commissioner will grant a request for an extension of time when a taxpayer provides the evidence, including affidavits described in paragraph (e), establishing to the Commissioner’s satisfaction that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides that, except as provided in paragraphs (b)(3)(i) through (iii) of § 301.9100-3, a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer—(i) requests relief under this section before the failure to make the regulatory election is discovered by the Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) 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; (iv) reasonably relied on the written advice of the Service; or (v) 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.

Section 301.9100-3(b)(3) 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 § 6662 at the time the taxpayer requests relief, and the new position requires or permits a regulatory election for which relief is requested; (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. The Service will ordinarily not grant relief because of the use of hindsight if specific facts have changed since the due date for making the election that make the election advantageous to the taxpayer. In such a case, the Service 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)(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 this section.

RULING

Based solely on the facts and the representations submitted, the Service concludes that the requirements of §§ 301.9100-1 and 301.9100-3 have been met. Accordingly, Taxpayer is granted permission to file the necessary elections to capitalize the interest paid on the acquisition loan for Lot A for Years 1–6 under § 266 when Taxpayer files his income tax returns for Years 1–6. Any elections shall be made in accordance with the Regulations under § 266 and shall be filed with the appropriate office of the Service having jurisdiction over Taxpayer's United States tax returns for Years 1–6. Please attach a copy of this private letter ruling to the returns and any forms filed in connection with making the election under § 266 when such documents are filed.

Except as expressly provided herein, no opinion is expressed or implied concerning the Federal income tax consequences of any aspect of any transaction or item discussed or referenced in this private letter ruling under any other provision of the Code or Regulations. Specifically, no opinion is expressed or implied concerning: (1) whether the interest on the acquisition loan may be validly capitalized under § 266; and (2) whether Taxpayer may make a valid § 266 election for any carrying charges with

respect to Lot A. We emphasize that this letter does not give Taxpayer permission to make an election to capitalize any carrying charges other than the interest on the acquisition loan. We further emphasize that this letter ruling does not grant any extension of time for the filing of Taxpayer's United States tax returns for Years 1–6. Taxpayer is subject to any appropriate penalty and interest resulting from his failure to have his tax returns filed timely.

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

Sincerely,

CHERYL L. OSEEKEY
Senior Counsel, Branch 6
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure
Copy for § 6110 purposes