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Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:
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Entity P =
CPA =

Dear

This is in response to a letter submitted on behalf of Entity P ("Taxpayer"), requesting an extension of time for Taxpayer to elect to use the alternative cost method provided by Rev. Proc. 92-29, 1992-1 C.B. 748, for the taxable year ended October 31, 1997. Taxpayer has requested that the election be considered timely filed under the authority contained in § 301.9100-3 of the Procedure and Administration Regulations.

The facts submitted disclose that Taxpayer is a newly formed company engaged in real estate development. It was the intent of Taxpayer to timely request permission to use the alternative cost method of accounting for common improvements under Revenue Procedure 92-29, 1992-1 C.B. 748. However, Taxpayer failed to timely file the return with the election within the time prescribed in Rev. Proc. 92-29.

Taxpayer originally planned to adopt a tax year ending December 31. Working on the assumption its taxable year ended on December 31, 1997, Taxpayer filed for an extension of time to file its federal income tax return on February 17, 1998 and for an additional extension on July 14, 1998. Taxpayer did not realize that, under section 706 of the Internal Revenue Code, the majority partner's year end, October 31, 1997, was also required to be adopted by the Taxpayer.

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In June of 1998, CPA identified that Taxpayer had not timely filed the last extension to file its income tax return. Once this was discovered, Taxpayer competed and filed its income tax return with an untimely alternative cost method election and shortly thereafter filed this request for relief.

Rev. Proc. 92-29 allows a developer of real estate to automatically elect the alternative cost method with respect to its projects. Under section 6 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 legal residence or principal place of business of the person required to make the return (if the developer is an individual, estate, or trust), or the district in which is located the principal place of business or the principal office or agency (if the developer is a corporation or partnership). 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 is required to attach a copy of the request to its timely filed original federal income tax return (determined with regard to extensions of time) for the taxable year.

Pursuant to section 301.9100-3(a) of the Procedure and Administration Regulations, the Commissioner has the discretion to provide for extensions of time for regulatory elections that do not meet the requirements of section 301.9100-2 (automatic extensions). Requests for relief subject to section 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government.

Based on the facts and information submitted and the representations made, we have determined that Taxpayer has acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government. Accordingly, the requirements of the regulations for the granting of relief have been satisfied in this case, and Taxpayer is granted an extension of time within which to file an election under Rev. Proc. 92-29 for the Taxpayer's tax year ending October 31, 1997.

Accordingly, Taxpayer is granted an extension of time until 30 days from the date of this letter to properly execute the election to capitalize interest and taxes under section 266 of the Code for the tax year ended October 31, 1997. The election shall be made in accordance with the regulations under section 266 and shall be filed with the District Director's office having jurisdiction over the Taxpayer's tax return.

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.

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This ruling is directed only to the Taxpayer that requested it. Section 6110(j)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Sincerely,

Assistant Chief Counsel
Income Tax and Accounting

By: Irwin A. Leib
Irwin A. Leib
Deputy Assistant Chief Counsel

Enclosures (2)
Copy of this letter
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cc: