

## Internal Revenue Service

Number: **200102006**  
Release Date: 1/12/2001  
Index Number: 9100.00-00  
263.02-01

## Department of the Treasury

P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Person to Contact:

Telephone Number:

Refer Reply To:  
CC::PSI:7:PLR-106743-00

Date: September 15, 2000

### LEGEND

Taxpayer =

A =

a =

b =

c =

Dear

This responds to a letter dated March 20, 2000, from your representative requesting permission, under section 301.9100-(1)(a) of the Procedure and Administration Regulations for an extension of time to make an election under section 263(c) of the Internal Revenue Code for the taxable year ended a.

According to that submission, Taxpayer formed a new wholly owned subsidiary, A. On b, A purchased the assets of an active business whose operations included the drilling for and production of oil and gas. The oil and gas properties acquired by A included both working wells and oil and gas rights.

Taxpayer was aware of the election to deduct intangible drilling and development costs (IDC) and intended to deduct those costs when incurred. In preparing the c return, the taxpayer's in house tax professionals relied on financial statements and records prepared by A. The balance sheet prepared by A included "Total Equipment"

which was the sum of two ledger accounts entitled "Construction Work in Process" and "Equipment - General".

Believing the "Construction Work in Process" account to be expenditures for equipment not yet placed in service Taxpayer did not deduct these amounts on the 1998 tax return. In the fourth quarter of 1999 Taxpayer's in house tax professionals discovered that the "Construction Work in Process" account contained IDC that related to the 1998 tax year.

Neither the Taxpayer nor A had previous experience with the operations of an oil and gas business and never incurred IDC prior to 1998.

Section 263(c) of the Internal Revenue Code provides an election, under regulations prescribed by the Secretary, to deduct intangible drilling and development costs. The regulations appear under section 1.612-4 of the Income Tax Regulations. Section 1.612-4(d) states that the election may be exercised by claiming IDC 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 IDC, it is deemed to have elected to recover such costs through depletion.

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

Requests for relief under § 301.9100-3 will be granted 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 relevant part, that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer 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.

Based on the information presented and the representations made, we conclude that the requirements of sections 301.9100-1 through 301.9100-3 have been satisfied. Accordingly, you are granted an extension of time to make the election to deduct IDC. The election must be made within 60 days of the date of this letter by filing it with an amended return for c. A copy is enclosed for that purpose.

We note, however, that the burden is upon the Taxpayer to establish to the Service's satisfaction that all of the requirements of § 263(c) are met.

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

Sincerely,

Paul F. Kugler

Paul F. Kugler  
Assistant Chief Counsel  
(Passthroughs and Special Industries)

Enclosure:  
Copy for § 6110 purposes