Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B07 – PLR-127067-03

Date:
March 29, 2004

In Re:

Legend

Partnership =

Taxable Year =

Agreement =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

Year 3 =

Dear :

This letter responds to your letter, dated April 16, 2003, requesting a ruling concerning an election under section 263(c) of the Internal Revenue Code.

The represented facts are as follows. The Partnership, a calendar year

accrual-basis taxpayer, was formed on Date 1. The terms of the Agreement provide that the Partnership will elect under § 263(c) to charge to expense all intangible drilling and development costs (IDC).

As a result of various transfers of interests in the Partnership, as well as transfers of interests in a lower tier partnership, the Partnership several times was deemed terminated and reformed under § 708(b)(1)(B). The second deemed termination and reformation of the Partnership occurred on Date 2 and resulted in a short taxable year beginning on Date 1 and ending on Date 2.

On or about Date 3, the Partnership's tax reporting partner (TRP) retained a new tax professional to assume responsibility for preparing tax returns, including the Partnership's tax returns. The previous tax professional retained responsibility for preparing all returns, including the Partnership's tax return, for Year 1.

During Year 1, the Partnership's TRP changed its accounting system and implemented new accounting software. During the course of the change in tax professionals, and the implementation of the new accounting software, the ongoing responsibility for filing the Partnership's tax return for Taxable Year was overlooked by both the tax professionals and the partners. Consequently, the Partnership's return was not filed for Taxable Year. The failure to file the Partnership's return for Taxable Year was not discovered until Year 3 during a review of the filing requirements for Year 2. The Partnership represented that it will file a return for Taxable Year with the election to expense IDC.

For Taxable Year, all of the partners of the Partnership followed the treatment specified in the Agreement, and charged to expense on their corporate tax returns the IDC paid or incurred by the Partnership during Taxable Year.

Section 263(c) provides an election, under regulations prescribed by the Secretary, to deduct as expenses IDC. Section 1.612-4 of the Income Tax Regulations implements the provisions of § 263(c). Section 1.612-4(d) provides that the option to deduct IDC may be exercised by claiming the IDC as a deduction on the taxpayer's return for the first taxable year in which the taxpayer pays or incurs IDC. No formal statement is necessary, but if the taxpayer fails to deduct the IDC, the taxpayer is deemed to have elected to recover the IDC through depletion. Section 1.612-4(e) provides that any such option or election shall be binding upon the taxpayer for the first taxable year for which it is effective and for all subsequent taxable years.

The information submitted by the Partnership indicates that the Agreement specifies that the Partnership will elect to deduct currently IDC paid or incurred by the Partnership. Consistent with the Agreement, each partner deducted its proportionate

share of the IDC paid or incurred by the Partnership during Taxable Year. In addition, the Partnership represented that it will file its return for Taxable Year with the election to expense IDC. Accordingly, based on the information submitted and the representations made, we conclude that the Partnership has met the requirements of § 1.612-4(d) to expense IDC on its partnership tax return for Taxable Year.

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. Furthermore, this ruling does not alleviate the consequences of noncompliance with § 6031, which requires every partnership to make a return for each taxable year.

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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

A copy of this letter must be attached to any income tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to taxpayer.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. 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.

Sincerely,

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)