

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Telephone Number:

Refer Reply To:

CC:PSI:6 – PLR-143649-03

Date:

December 01, 2003

In Re:

Re: Request for Extension of Time to File Application for Certification of Historic Status

Taxpayer =

Parent =

Property =

N =

C =

A =

Q =

B =

G =

H =

I =

J =

K =

L =

R =

C =

Y =

N =

Q =

RR =
UU =
WW =
XX =
CFO =
Accountant =
YY =
ZZ =
AA =
BB =

Dear _____ :

This letter responds to a letter dated July 18, 2003, and supplemental correspondence, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations for Taxpayer to make a qualified progress expenditure election under section 47(d)(5) of the Internal Revenue Code.

According to the information submitted, Taxpayer owns and is rehabilitating Property. Taxpayer first incurred rehabilitation expenditures with respect to Property in N.

Taxpayer is a wholly owned subsidiary of Parent. Parent was a multi-bank holding company headquartered in C. In A, Parent elected to become a financial holding company under the Graham-Leach-Bliley Act. Parent filed a consolidated return under the name Q for the taxable year ended B, which is the taxable year to which Taxpayer wants to apply the credit.

Taxpayer is Parent's principal affiliate bank engaged in the business of banking. Taxpayer also provides investment and cash management services, data processing services for correspondent banks, and a full range of trust activities for individuals, estates, corporations, governmental bodies and public authorities. Taxpayer operates branch-banking activities in G.

The Property was originally placed in service in H. Taxpayer operated the Property as a bank branch for I. Taxpayer began leasing the Property in J and purchased it in K. In late L, Taxpayer devised a plan for the phased rehabilitation of the Property.

Parent's tax department (the "tax department") prepares consolidated returns for an affiliate group that includes Taxpayer. Beginning in R, the tax department experienced extreme instability due in large part to key tax officers being on extended medical leave.

During this period of instability, the tax department was involved in a number of significant projects. From U through Y, Taxpayer purchased parcels of land, demolished buildings, and built a Z state-of-the-art data processing and technology center. The tax department was extensively involved in determining the appropriate depreciation treatment of this new facility. Parent developed the new technology center in accordance with a local QQ with the City of C. The QQ was accompanied by burdensome administrative requirements to qualify Taxpayer's expenditures as reimbursable. Also, to ensure regulatory compliance with Y2K directives, commencing in RR Parent selected and implemented an UU. Parent continues to enhance and update the system. The tax department is involved with the system depreciation records, and proper tax depreciation calculations from this system. In addition, the tax department was involved in selecting, testing, and implementing a new N tax year tax return processing system.

In L, Parent's Senior Vice President in the Facilities Management Services department met several times with an outside architect to discuss renovation of the Property. During these meetings, the outside architect completed base drawings and determined necessary code modifications. Taxpayer and the outside architect envisioned the rehabilitation occurring in several stages over a period of years.

In WW, Taxpayer began rehabilitation work on the Property. Taxpayer has continued the rehabilitation work without interruption and is expecting to complete it in XX.

Taxpayer represents that due to the instability of the tax department and the numerous special projects that the tax department was handling, no one in the tax department recognized, at the time Parent filed the N consolidated return, the need to file Form 3468, "Investment Credit," with the N tax return to make an election under § 47(d)(5) of the Internal Revenue Code. As a result, Parent's N consolidated return did not include any election on Form 3468 to take the credit. Taxpayer insists that it would have made this election if the tax department had been familiar with these requirements.

In the fourth quarter of A, during a meeting between Parent's Chief Financial Officer, CFO, and Accountant, Taxpayer realized that it needed to file a Form 3468 in order to claim a rehabilitation credit on the Property. At that time, Taxpayer learned that the Property was listed on a local building list of structures to be considered for the National Registry of Historic Places ("Registry").

In YY, Taxpayer engaged the services of a historic preservation services firm and an architect firm to place the Property on the Registry. Accountant advised the tax department to take the credit on its A consolidated return for progress expenditures made in A, and a Form 3468 was attached to Parent's filed A tax return.

The Service has not initiated an examination of Parent's consolidated federal income tax return for the N taxable year, or any subsequent taxable year.

Taxpayer represents that it intended to claim historic rehabilitation credit attributable to the rehabilitation. However, as previously discussed, the tax department did not become aware of the need to file an election to claim the rehabilitation credit until after ZZ, the extended due date for Parent's N consolidated return. Taxpayer filed the application for certification of historic status with the Department of Interior, National Park Service ("NPS") on AA, and the NPS approved part 1 of the application on BB. Taxpayer submitted the request for an extension of time under § 301.9100-3 on July 24, 2003.

LAW AND ANALYSIS

Generally, the investment credit for qualified rehabilitation expenditures is allowed in the taxable year in which the property attributable to the expenditure is placed in service. See §1.48-12(f)(2) of the Income Tax Regulations. However, section 47(d) permits taxpayers to elect to take qualified rehabilitation expenditures into account when paid or incurred, instead of when the rehabilitated property is placed in service. Section 1.46-5(o)(2) provides that the election must be made on Form 3468 and filed with the original income tax return for the first taxable year to which the election will apply.

Section 47(d) applies to any building which is being rehabilitated by or for the taxpayer if (i) the normal rehabilitation period for such building is 2 years or more, and (ii) it is reasonable to expect that such building will be a qualified rehabilitated building in the hands of the taxpayer when it is placed in service.

Section 1.48-12(b)(1) provides that the term "qualified rehabilitated building" means any building and its structural components that, among other requirements, has been substantially rehabilitated within the meaning of §1.48-12(b)(2) for the taxable year. **Section 1.48-12(b)(2) provides that a building shall be treated as having been substantially rehabilitated for a taxable year only if the qualified rehabilitation expenditures incurred during any 24-month period selected by the taxpayer ending with or within the taxable year exceed the greater of (A) the adjusted basis of the building (and its structural components), or (B) \$ 5,000.**

Section 1.48-12(d)(7)(ii) provides that when the entire rehabilitation project is not fully completed by the date that is 30 months after the taxpayer filed the tax return upon which the credit was claimed (e.g. a phased rehabilitation), and the Secretary of the Interior has thus not yet certified the rehabilitation, **the taxpayer must submit a written statement to the District Director stating such fact prior to the last day of the 30th month, and the taxpayer shall be requested to consent to an agreement under**

section 6501(c)(4) extending the period of assessment for any tax relating to the time for which the credit was claimed.

Section 301.9100-1(c) provides that the Commissioner 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.

Section 301.9100-1(b) provides that the term "election" includes an application for relief in respect of tax.

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 an election. 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. A request for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

CONCLUSIONS

Based solely on the facts and representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Taxpayer's application will be considered timely filed for purposes of §1.46-5(o)(2). A copy of this letter should be sent to the appropriate service center with a request that it be attached to Taxpayer's amended N tax return. A copy is enclosed for that purpose.

Except as specifically set forth above, we express no opinion concerning the federal income tax consequences of the facts described above under any other provisions of the Code. **Moreover, we express no opinion on whether the Property was substantially rehabilitated in the N taxable year. See §1.48-12(b)(2).**

In addition, if the taxpayer fails to receive final certification of completed work prior to the date that is 30 months after the date that the taxpayer filed the tax return on which the credit was claimed, the taxpayer must submit a written statement to the District Director stating such fact prior to the last day of the 30th month, and **the taxpayer shall consent to an agreement under section 6501(c)(4) extending the period of assessment for any tax relating to the time for which the credit was claimed. See §1.48-12(d).**

In accordance with the power of attorney, we are sending copies of this letter to Taxpayer's authorized representatives. We are also sending a copy of this letter to the Industry Director, Financial Services (LMSB:F).

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.

Sincerely,

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

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

cc: