Internal Revenue Service

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Person To Contact:
, ID No.
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Legend

Taxpayer =
Year 1 =
Year 2 =
Date A =
Date B =
Company A =
Firm A =
Employee A =

Dear :

This ruling responds to letters dated February 20, 2007, and March 22, 2007, submitted by your authorized representative, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations, for taxpayer to make elections under § 198 of the Internal Revenue Code to deduct qualified environmental remediation expenditures for its Year 1 and Year 2 taxable years.

FACTS

Taxpayer is a C Corporation for federal income tax purposes. Taxpayer uses a calendar taxable year and an overall accrual method of accounting. Taxpayer is a provider of environmental and hazardous waste management services. On Date A, taxpayer acquired the assets of Company A, another provider of environmental and hazardous waste management services. Taxpayer represents that as part of that acquisition, taxpayer assumed liabilities that, when paid, would give rise to a deduction of qualified environmental remediation expenditures under § 198.

Taxpayer prepared its own Year 1 and Year 2 federal income tax returns and deducted qualified environmental remediation expenditures incurred and paid in the respective years. At that time, Employee A, treasurer of taxpayer, believed all necessary steps had been taken to properly deduct qualified remediation expenditures. However, on Date B, Firm A discovered that taxpayer failed to file the proper § 198 election statement with its Year 1 and Year 2 federal income tax returns.

Because the time for making these elections has expired, taxpayer requested relief under § 301.9100-3 for its Year 1 and Year 2 taxable years.

LAW AND ANALYSIS

Section 198 provides, in part, that a taxpayer may elect to treat any qualified environmental remediation expenditure which is paid or incurred by the taxpayer as an expense which is not chargeable to capital account. Any expenditure which is so treated shall be allowed as a deduction for the taxable year in which it is paid or incurred.

Under § 198(b), a qualified environmental expenditure means any expenditure which is otherwise chargeable to capital account and which is paid in connection with the abatement or control of hazardous substances at a qualified contamination site.

Rev. Proc. 98-47, 1998-2 C.B. 319, provides the procedures for taxpayers to make the election under § 198 to deduct any qualified environmental remediation expenses. Under section 3.01 of Rev. Proc. 98-47, the election must be made on or before the due date (including extensions) for filing the income tax return for the taxable year in which the qualified environmental expenditures are paid or incurred. In addition, persons other than individuals are required to make the election by including the total amount of the § 198 expenses on the line for “Other Deductions” on their appropriate federal tax return. On a schedule attached to the return that separately identifies each expense included in “Other Deductions,” the taxpayer must write “Section 198 Election” on the line on which the § 198 expense amounts separately appear. *See* section 3.02(2) of Rev. Proc. 98-47.

Section 3.03 of Rev. Proc. 98-47 provides that, if for any taxable year, the taxpayer pays or incurs more than one qualified environmental remediation expenditure, the taxpayer may make a § 198 election for any one or more of such expenditures for that year. Thus, the taxpayer may make a § 198 election with respect to a qualified environmental remediation expenditure even though the taxpayer chooses to capitalize other such expenditures (whether or not they are of the same type or paid or incurred with respect to the same qualified contamination site). Further, a § 198 election for one year has no effect for other years. Thus, a taxpayer must make a § 198 election for each year in which the taxpayer intends to deduct qualified environmental remediation expenditures.

Section 301.9100-3 generally provides extensions of time for making regulatory elections. For this purpose § 301.9100-1(b) defines the term "regulatory election" to include an election whose deadline is prescribed by a revenue ruling, revenue procedure, notice or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3 provides that requests for extensions of time for regulatory elections will be granted when the taxpayer provides evidence (including affidavits described in the regulations) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith and granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1) states that a taxpayer will be 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 Internal Revenue 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 the taxpayer was unaware of the necessity for the election;
(iv) Reasonably relied on the written advice of the Internal Revenue Service; or,
(v) Reasonably relied on a qualified tax professional and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(b)(3) provides 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. If specific facts have changed since the due date for making the election that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief. In such 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) provides, in part, that the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief.

Section 301.9100-3(c)(1)(i) provides, in part, that the interests of the Government are prejudiced if granting relief would result in a 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 § 301.9100-3.

Based on our analysis of the facts, taxpayer in the present case acted reasonably and in good faith. As demonstrated in the affidavits provided by Employee A, the taxpayer made the request for relief before the failure to make the regulatory election was discovered by the Internal Revenue Service. Further, taxpayer is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662, taxpayer was not informed of the election and chose not to file for it, and taxpayer did not use hindsight in requesting relief.

In addition, based on the facts provided, the interests of the Government will not be prejudiced by granting relief in this case. Taxpayer represents that granting relief will not result in taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than if the election had been timely made, none of the taxable years for which the taxpayer is requesting relief are closed, nor will any closed taxable years be affected by the making of the election for these years.

RULING

Because taxpayer acted reasonably and in good faith, and because the interests of the Government will not be prejudiced if the request for relief is granted, taxpayer has met the requirements for an extension under § 301.9100-3 for making the elections under § 198 for its Year 1 and Year 2 taxable years. Accordingly, taxpayer is granted an extension of 60 days from the date of this ruling letter to make the elections under § 198 by filing amended federal income tax returns for its Year 1 and Year 2 taxable years. Taxpayer must comply with all the requirements of Rev. Proc. 98-47, 1998-2 C.B. 319, for the manner of making such election upon its amended returns.

CAVEATS

No opinion is expressed as to the application of any other provision of the Code or the regulations which may be applicable under these facts. Specifically, no opinion is expressed as to whether the expenditures discussed in this ruling constitute qualified environmental remediation expenditures under § 198. 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.

Enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110.

In accordance with the provisions of a power of attorney on file with this office, we are sending a copy of this letter ruling to taxpayer's authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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,

THOMAS A. LUXNER
Chief, Branch 1
(Income Tax & Accounting)