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Washington, DC 20224

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Date:
March 10, 2010

Re: Request for Extension of Time to Make the Election Not to Deduct the Additional First Year Depreciation and to Make the Election to Deduct Intangible Drilling and Development Costs over the 60-Month Period

P =
S1 =
S2 =
A =
B =
C =
Date1 =
Date2 =
Date3 =
Date4 =

Dear :

This letter responds to a letter dated September 14, 2009, and supplemental correspondence, submitted by P on behalf of itself and S1 and S2 (P, S1, and S2 will be collectively referred to as "Taxpayer"), requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations (1) to make the election not to deduct the additional first year depreciation under § 168(k) of the Internal Revenue Code for all classes of qualified property placed in service in the taxable year ended Date1 (the A taxable year) and (2) to make the election under § 59(e) to deduct intangible drilling and development costs ("IDC") incurred in the A taxable over the 60-month period.

FACTS

Taxpayer represents that the facts are as follows:

P is the common parent of an affiliated group of corporations, which includes S1 and S2, that files consolidated federal income tax returns. Taxpayer is an independent exploration and production company that drills for, acquires, develops, and produces natural gas and crude oil primarily in B and C. For the taxable year ended Date1, P planned to make the election to deduct a portion of Taxpayer's IDC ratably over the 60 month period under § 59(e) and to make the election not to deduct the additional first year depreciation under § 168(k) for all classes of qualified property placed in service by Taxpayer.

For the taxable year ended Date1, Taxpayer used an outside tax preparer to prepare its federal and state income tax returns. The tax preparer prepared a request for an extension of time to file P's consolidated federal income tax return for the A taxable year and delivered it to P on Date2 to be filed by P by Date3, the due date for the return. Due to a clerical error, P did not timely file the request for an extension or its consolidated federal income tax return for the A taxable year. P filed its consolidated federal income tax return for the A taxable year on Date4. On this return, P made the election not to deduct the additional first year depreciation under § 168(k) for all classes of qualified property placed in service by Taxpayer in the A taxable year and made the election under § 59(e) to deduct IDC incurred by Taxpayer in the A taxable year over the 60-month period by providing the statement described in § 1.59-1(b) of the Income Tax Regulations.

RULINGS REQUESTED

Accordingly, P requests an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations (1) to make the election not to deduct the additional first year depreciation under § 168(k) for all classes of qualified property placed in service by Taxpayer in the taxable year ended Date1 and (2) to make the election under § 59(e) to deduct IDC incurred by Taxpayer in the taxable year ended Date1 over the 60-month period.

LAW AND ANALYSIS

Section 59(e) provides an optional write-off of certain tax preferences over an applicable period. Section 59(e)(4) provides that an election may be made under § 59(e)(1) with respect to any portion of any qualified expenditure.

Under § 59(e)(2), qualified expenditure includes, among others, any amount which, but for an election under § 59(e), would have been allowable as a deduction for the taxable year in which paid or incurred under § 263(c) (relating to intangible drilling and development expenditures).

Section 1.59-1(b)(1) provides that an election under § 59(e) shall only be made by attaching a statement to the taxpayer's income tax return for the taxable year in

which the amortization of the qualified expenditures subject to the § 59(e) election begins. The statement must be filed no later than the date prescribed by law for filing the taxpayer's original income tax return (including any extensions of time) for the taxable year in which the amortization of the qualified expenditures subject to the § 59(e) election begins.

Section 168(k)(1) provides a 50-percent additional first year depreciation deduction for the taxable year in which qualified property is placed in service by a taxpayer.

Section 168(k)(2)(D)(iii) provides that a taxpayer may elect not to deduct the 50-percent additional first year depreciation for any class of property placed in service during the taxable year. The term "class of property" is defined in § 1.168(k)-1(e)(2) as meaning, in general, each class of property described in § 168(e) (for example, 5-year property).

Section 1.168(k)-1(e)(3)(i) provides that the election not to deduct additional first year depreciation must be made by the due date (including extensions) of the federal tax return for the taxable year in which the property is placed in service by the taxpayer.

Section 1.168(k)-1(e)(3)(ii) provides that the election not to deduct additional first year depreciation must be made in the manner prescribed on Form 4562, "Depreciation and Amortization," and its instructions. The instructions to Form 4562 for the A taxable year provided that the election not to deduct the additional first year depreciation is made by attaching a statement to the taxpayer's timely filed tax return indicating the class of property for which the taxpayer is making the election and that, for such class the taxpayer is not claiming any additional first year depreciation.

Under § 301.9100-1, the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election.

Sections 301.9100-1 through 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.

Section 301.9100-3(a) provides that requests 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 the grant of 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, an extension of time is hereby granted for P (1) to make the election not to deduct the additional first year depreciation under § 168(k) for all classes of qualified property placed in service by Taxpayer in the taxable year ended Date1 and (2) to make the election under § 59(e) to deduct IDC incurred by Taxpayer in the taxable year ended Date 1 over the 60-month period. In this regard, we will consider both of these elections made by P for itself and S1 and S2 on P's consolidated federal income tax return for the A taxable year filed on Date4 to be timely made.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal income tax consequences of the facts described above. Specifically, no opinion is expressed or implied on whether any item of depreciable property placed in service by Taxpayer in the A taxable year is eligible for the additional first year depreciation deduction. Further, this letter ruling does not grant an extension of time for filing P's consolidated federal income tax return for the taxable year ended Date1.

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 appropriate Industry Director, LMSB.

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,

Kathleen Reed

Kathleen Reed
Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax and Accounting)

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