**Internal Revenue Service**

Department of the Treasury
Washington, DC 20224

Number: **201027004**
Release Date: 7/9/2010

Index Number: 59.05-06, 263.16-00, 9100.02-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B06
PLR-109119-10

Date: March 25, 2010

In Re:

LEGEND

Taxpayer =

State 1 =
State 2 =
Firm =
X =
Year 1 =
Year 2 =
Year 3 =
Year 4 =
Year 5 =
Year 6 =
Year 7 =

Dear :

This responds to a letter dated February 22, 2010, from Taxpayer's representative requesting permission, under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations for an extension of time to make an election under § 59(e) of the Internal Revenue Code (Code) and § 1.59-1(b)(1) of the Treasury Regulations to amortize intangible drilling and development costs (IDC) for the tax years ending Year 4 and Year 5.

According to the submission, Taxpayer is a privately owned corporation incorporated in State 1 in Year 1 with its principal place of business in State 2. Taxpayer is a developer of clean, renewable power projects with a primary focus on the development and operation of clean, renewable, continuously operating baseload geothermal power plants. Taxpayer's projects comprise over X acres of private and

federal land leases. During the years Year 1 through Year 3, Taxpayer was primarily a development stage company engaged in locating and acquiring geothermal property. Taxpayer did not incur any IDC prior to Year 4. In Year 4, Taxpayer began drilling operations for its first two geothermal observation wells and thus incurred IDC. Taxpayer completed the first well in Year 4 and the second well in Year 5.

Taxpayer has limited administrative staffing with no in-house corporate tax department. An outside CPA prepared Taxpayer's tax returns for the Year 2 through Year 3 taxable years. The CPA did not bring up the issue of making elections under §§ 263(c) and 59(e) because Taxpayer incurred no IDC prior to Year 4, and Taxpayer did not consult CPA about needed future elections. Taxpayer engaged Firm in Year 5 to perform financial statement audits of the Year 4 and Year 5 books and records. Taxpayer engaged Firm in Year 6 to prepare its Year 4 and Year 5 tax returns. A significant change in the management of Taxpayer resulted in a delay of the Year 4 audit. Accordingly, Taxpayer's preparation of the Year 4 and Year 5 tax returns was delayed pending the completion of financial statement audits for those years. As a result, Firm is currently in the process of preparing the Year 4 and Year 5 returns and expects that these returns will be filed in early Year 7.

Because Taxpayer will file late returns for both Year 4 and Year 5, and the § 59(e) elections would not be timely, Firm advised Taxpayer to seek an extension of time to file the § 59(e) elections under Treas. Reg. §§ 301.9100-1 and 301.9100-3. Taxpayer represents that granting the relief requested will not result in Taxpayer having a lower tax liability in the aggregate for the tax year affected by the election than Taxpayer would have had if the election had been timely made (taking into account the time value of money). Taxpayer also represents that had Taxpayer known that the election to amortize these costs under § 59(e) was required to be made by the due date of its returns (including any extension of time), it would have made those elections on timely filed returns for the total IDC incurred in 2007 and 2008.

## Law and Analysis

Section 59(e)(1) allows a taxpayer to deduct ratably over a specified period any qualified expenditure to which an election under § 59(e)(1) applies.

Section 59(e)(2) includes in the definition of "qualified expenditure", any amount which, but for an election under § 59(e), would have been allowable as a deduction (determined without regard to § 291) for the taxable year in which paid or incurred under § 263(c) (relating to intangible drilling and development expenditures).

Section 59(e)(1) allows the taxpayer, in the case of a qualified expenditure for intangible drilling and development expenditures, to deduct the expenditure ratably over the 60 month period beginning with the month in which such expenditure was paid or incurred.

Section 59(e)(3) specifically prohibits the deduction of the qualified expenditures under any other section of the Code if this option is elected. Section 59(e)(4)(A) allows a taxpayer to make an election under § 59(e)(1) for any portion of any qualified expenditure.

Treas. Reg. § 1.59-1(b)(1) prescribes the time and manner of making the § 59(e)(1) election. According to § 1.59-1(b)(1), an election under § 59(e) shall only be made by attaching a statement to the taxpayer's income tax return (or amended return) for the taxable year in which the amortization of the qualified expenditures subject to the § 59(e) election begins. The taxpayer must file the statement 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 263(c) of the Code allows a taxpayer an election, under regulations prescribed by the Secretary, to deduct IDC. The regulations appear under § 1.612-4. Under § 1.612-4(d), the taxpayer may exercise the election 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, the taxpayer is deemed to have elected to recover such costs through depletion to the extent that they are not represented by physical property and through depreciation to the extent that they are represented by physical property.

Under § 301.9100-1(c) of the Treasury Regulations, 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 allows automatic extensions of time for making certain elections. Section 301.9100-3 allows extensions of time for making elections that do not meet the requirements of § 301.9100-2.

The Commissioner will grant requests for relief under § 301.9100-3 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 part, that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests

relief under § 301.9100-3 before the failure to make the regulatory election is discovered by the Internal Revenue Service, and the taxpayer failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election. Section 301.9100-3(c) provides, in part, that the government's interest is considered prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate of 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).

Based solely on the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 through 301.9100-3 have been satisfied. Accordingly, the Commissioner grants Taxpayer an extension of time of 60 days from the date of this letter to make the election under § 59(e) on the tax returns for Year 4 and Year 5 with the appropriate service center. Taxpayer should attach a copy of this letter to the tax returns. We have enclosed two copies for that purpose.

The rulings contained in this letter are based upon information and representations submitted by 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. Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code and the Regulations thereunder. Specifically, we express no opinion concerning whether Taxpayer satisfies the requirements of § 263(c) or § 59(e).

This letter ruling is directed only to the taxpayer who requested it. Under § 6110(k)(3), a letter ruling may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this ruling letter to your authorized representative.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By: _____
Jaime C. Park, Senior Technician Reviewer
Branch 6
Office of Associate Chief Counsel
Passthroughs & Special Industries

Enclosures (3):
Copies (2)
Copy for § 6110 purposes