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Washington, DC 20224

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Person To Contact:
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Telephone Number:

Refer Reply To:
CC:ITA:B07
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Date:
November 19, 2012

Re: Request for Extension of Time to Make the Repair Allowance Election

Legend

Parent =
Taxpayer =
Year1 =
Year2 =

Dear :

This letter responds to a letter dated May 21, 2012, submitted by Parent on behalf of Taxpayer, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the election provided in §§ 1.167(a)-11(d)(2)(ii) and 1.167(a)-11(f) of the Income Tax Regulations to apply the repair allowance for each of the taxable years Year1 through Year2 to certain expenditures incurred by Taxpayer during such taxable years and associated with certain property placed in service by Taxpayer before 1981.

FACTS

Parent represents that the facts are as follows:

Parent and Taxpayer are members of an affiliated group of corporations that is headed by Parent and that files consolidated federal income tax returns. Parent and Taxpayer use the accrual method of accounting and are calendar year taxpayers. Taxpayer is a vertically integrated regulated electric company serving retail customers.

Parent timely filed the consolidated federal income tax returns for each of the taxable years Year1 through Year2. On each of these returns, Taxpayer claimed the

deduction for a repair allowance pursuant to § 1.167(a)-11(d)(2)(ii) for certain expenditures associated with certain property placed in service by Taxpayer before 1981. Parent and Taxpayer, however, inadvertently failed to attach a repair allowance election statement to each of these consolidated federal income tax returns.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the election provided in §§ 1.167(a)-11(d)(2)(ii) and 1.167(a)-11(f) to apply the repair allowance for each of the taxable years Year1 through Year2 to certain expenditures incurred by Taxpayer during such taxable years and associated with certain property placed in service by Taxpayer before 1981.

LAW AND ANALYSIS

Section 263(e) of the Internal Revenue Code of 1954 (the 1954 Code) (formerly designated as § 263(f) when added to the 1954 Code by § 109(b) of the Revenue Act of 1971 (the "Act")), provides that the Secretary may by regulations provide that the taxpayer may make an election of a repair allowance under which amounts for the taxable year representing either repair expenses or specified repair, rehabilitation, or improvement expenditures for any class of depreciable property (1) are allowable as a deduction under § 162(a) or § 212 (whichever is appropriate) to the extent of the repair allowance for that class, and (2) to the extent such amounts exceed for the taxable year such repair allowance, are chargeable to capital account.

Section 1.263(f)-1 implements § 263(e). For rules regarding the election of the repair allowance, the definition of repair allowance property, and the conditions under which an election may be made, § 1.263(f)-1 cross-references to § 1.167(a)-11(d)(2) and (f). Further, § 1.263(f)-1 provides that the election of the repair allowance may be made for a taxable year only if the taxpayer makes an election to claim its depreciation allowance under § 1.167(a)-11 for such taxable year.

Section 1.167(a)-11 provides an asset depreciation range and class life system for determining the reasonable allowance for depreciation of designated classes of assets placed in service after December 31, 1970. This system is known as the Class Life Asset Depreciation Range ("CLADR") System.

Section 1.167(a)-11(a)(1) provides that the CLADR System is optional with the taxpayer and the taxpayer has an annual election.

Section 1.167(a)-11(d)(2) provides an elective, simplified procedure for determining whether expenditures with respect to certain property are to be treated as deductible expenses or capital expenditures.

Section 1.167(a)-11(d)(2)(ii) provides that in the case of an asset guideline class which consists of "repair allowance property" as defined in § 1.167(a)-11(d)(2)(iii), subject to the provisions of § 1.167(a)-11(d)(2)(v), the taxpayer may elect to apply the asset guideline class repair allowance described in § 1.167(a)-11(d)(2)(iii) for any taxable year ending after December 31, 1970, for which the taxpayer elects to apply § 1.167(a)-11, the CLADR System.

The Economic Recovery Tax Act of 1981 ("ERTA"), Pub. L. 97-34, enacted the Accelerated Cost Recovery System ("ACRS") for tangible depreciable property placed in service after 1980 ("recovery property"). Section 203(b) of ERTA terminated the CLADR System for recovery property placed in service after December 31, 1980, in taxable years ending after such date. See § 167(m)(4) of the 1954 Code. In addition, § 201(c) of ERTA repealed the repair allowance, authorized by § 263(e), effective for property placed in service after December 31, 1980, in taxable years ending after such date.

Thus, for tangible depreciable property placed in service after December 31, 1980, the CLADR System was superseded by ACRS. However, the repair allowance continued to be in effect for expenditures which, although incurred after December 31, 1980, were for the repair, maintenance, rehabilitation, or improvement of property placed in service before January 1, 1981, for which the taxpayer elected the CLADR System.[1]

Section 1.167(a)-11(f) provides for the time and manner of making the election to use the CLADR System and of also electing the repair allowance. Section 1.167(a)-11(f)(1)(i) provides that an election to apply § 1.167(a)-11 to eligible property is made with the income tax return filed for the taxable year in which the property is first placed in service by the taxpayer. Section 1.167(a)-11(f)(1)(ii) provides that all other elections under § 1.167(a)-11 may be made only within the time and in the manner prescribed by § 1.167(a)-11(f)(1)(i).

Section 1.167(a)-11(f)(2) provides that a taxpayer who elects to apply § 1.167(a)-11 must specify in the election ten information items. Among the items listed are whether the taxpayer elects to apply the asset guideline class repair allowance described in § 1.167(a)-11(d)(2)(iii). Section 1.167(a)-11(f)(2)(v).

Under § 301.9100-1, the Commissioner of Internal Revenue 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

[1] See footnote #1 of U.S. v. Wisconsin Power and Light Company, 38 F.3d 329 (7th Cir. 1994).

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.

CONCLUSION

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 is granted 60 calendar days from the date of this letter to make the election provided in §§ 1.167(a)-11(d)(2)(ii) and 1.167(a)-11(f) to apply the repair allowance for each of the taxable years Year1 through Year2 to expenditures incurred by Taxpayer during such taxable years for the repair, maintenance, rehabilitation, or improvement of repair allowance property placed in service by Taxpayer before 1981. This election must be made by Parent filing an amended consolidated federal tax return for each of the taxable years Year1 through Year2, with a statement indicating that Taxpayer is making the repair allowance election provided in §§ 1.167(a)-11(d)(2)(ii) and 1.167(a) -11(f).

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 1954 Code or the Internal Revenue Code of 1986. Specifically, no opinion is expressed or implied on the propriety of Taxpayer's computation of the repair allowance for the taxable years Year1 through Year2, including whether any expenditures incurred by Taxpayer during such taxable years are eligible for the repair allowance.

In accordance with the power of attorney, we are sending a copy of this letter to Parent's authorized representatives. We also are sending a copy of this letter to the appropriate operating division director.

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
Branch Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax & Accounting)

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