

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B06
PLR-148861-12

Date:
March 12, 2013

LEGEND:

Taxpayer =
Year =
Date =

Dear :

This responds to a letter dated November 1, 2012, and supplemental correspondence, from Taxpayer's representative requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election under § 59(e) of the Internal Revenue Code and § 1.59-1(b)(1) of the Income Tax Regulations, to amortize certain research and experimental expenditures incurred in Year.

According to the information submitted, Taxpayer is the common parent of an affiliated group of corporations that files a federal consolidated income tax return on a calendar year basis. Taxpayer relied on an independent tax preparer to advise it of relevant tax provisions and to prepare Taxpayer's Year tax return. The tax preparer, however, did not notify Taxpayer of the ability to make a § 59(e) election, and consequently, Taxpayer did not make a timely § 59(e) election.

On Date, Taxpayer engaged different tax professionals who advised Taxpayer to make the § 59(e) election by submitting a request for relief under § 301.9100-1 for an extension of time to make the election. This request is made pursuant to that advice.

Taxpayer represents that it was not aware of the ability to make a § 59(e) election to deduct research and experimental expenditures over a 10-year period. Taxpayer also represents that if it had been aware of the ability to take the election, Taxpayer would have timely made this election on its Year tax return.

Taxpayer represents that granting the relief requested will not result in Taxpayer having a lower tax liability in the aggregate for the tax years 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 represents that it acted in good faith and that granting relief will not result in prejudice to the interests of the Government.

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) applies.

Section 59(e)(2)(B) includes in the definition of “qualified expenditure” 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 § 174(a) (relating to research and experimental expenditures).

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.

Section 1.59-1(b)(1) prescribes the time and manner of making the election under § 59(e). 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.

Under § 301.9100-1(c), 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 6 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).

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)(1) 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; the taxpayer failed to make the election because of intervening events beyond the taxpayer's control; 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; the taxpayer reasonably relied on the written advice of the Service; or the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, 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) for research and experimental expenditures on the Year tax return with the appropriate service center. The election must comply with the requirements of § 1.59-1(b). Taxpayer should attach a copy of this letter to its related tax return, or if filing electronically, attach a statement to the 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 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 § 174(a) 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 representatives. We also are sending a copy of this letter to the appropriate Industry Director, LB&I.

Sincerely,
Associate Chief Counsel
(Passthroughs and Special Industries)

Jaime C. Park
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
(Passthroughs & Special Industries)