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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B06
PLR-135962-13, PLR-135963-13

Date:
January 13, 2014

In Re:

LEGEND:

Taxpayer =

Date =

Dear :

This letter responds to a letter dated August 8, 2013, and supplemental correspondence dated September 25, 2013, submitted by Taxpayer, requesting the following rulings:

(1) An extension of time pursuant to §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to make an election under § 168(k)(2)(D)(iii) of the Internal Revenue Code not to deduct the additional first year depreciation under § 168(k) for all classes of qualified property placed in service by Taxpayer in its taxable year ended Date.

(2) An extension of time pursuant to §§ 301.9100-1 through 301.9100-3 to make an election under § 59(e) to deduct ratably over a 10-year period research and experimental expenditures described in § 174.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer's primary business is the manufacture of semiconductors. Taxpayer uses the overall accrual method of accounting.

For its taxable year ended Date, Taxpayer intended to make an election not to deduct the additional first year depreciation deduction under § 168(k) for all classes of qualified property placed in service by Taxpayer during the taxable year ended Date. Taxpayer also intended to make an election under § 59(e) to deduct ratably over a 10-year period research and experimental expenditures described in § 174. However, Taxpayer inadvertently failed to file a Form 7004, Application of Automatic Time to File Certain Business Income Tax, Information, and Other Returns, with respect to its federal income tax return for the taxable year ended Date. As a consequence, Taxpayer did not timely file its return for the year ended Date, and accordingly, did not timely make elections under § 168(k)(2)(D)(iii) or § 59(e) for its tax year ended Date. Taxpayer has made representations explaining why the elections under § 168(k)(2)(D)(iii) and § 59(e) were not timely filed.

LAW AND ANALYSIS

Section 168(k)(1) allows a 50-percent additional first year depreciation deduction in the placed-in-service year for qualified property (i) acquired by a taxpayer after December 31, 2007, and before September 9, 2010, or acquired by a taxpayer generally after December 31, 2011, and (ii) placed in service by the taxpayer generally before January 1, 2014.

For qualified property described in § 168(k)(2)(B) or (C), § 168(k)(5) allows a 100-percent additional first year depreciation deduction in the placed-in-service year for such property that is acquired and placed in service by a taxpayer after September 8, 2010, and before January 1, 2013. See Rev. Proc. 2011-26, 2011-16 I.R.B. 664.

Section 168(k)(2)(D)(iii) provides that a taxpayer may elect not to deduct the 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) of the Income Tax Regulations as meaning, in general, each class of property described in § 168(e) (for example, 5-year property). See section 5.01 of Rev. Proc. 2008-54, 2008-2 C.B. 722, and section 3.01 of Rev. Proc. 2011-26, 2011-16 I.R.B. at 665 (rules similar to the rules in § 1.168(k)-1 for “qualified property” or for “30-percent additional first year depreciation deduction” apply for purposes of § 168(k) as currently in effect).

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 a taxable year

beginning in 2012 provide 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 that the taxpayer is electing not to deduct the additional first year depreciation and the class of property for which the taxpayer is making the election.

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 for the taxable year in which paid or incurred under § 174(a) (relating to research and experimental expenditures).

Section 59(e)(1) allows a taxpayer to deduct research and experimental expenditures ratably over the 10-year period beginning with the taxable year in which the expenditures were made.

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 §§ 301.9100-1 through 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 301.9100-1, 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)(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 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(b)(3) provides, in part, that a taxpayer is deemed to have not acted reasonably or in good faith if the taxpayer 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 (taking into account any qualified amended return filed within the meaning of § 1.6664-2(c)(3) of this chapter) and the new position requires or permits a regulatory election for which relief is requested; the taxpayer was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or the taxpayer uses hindsight in requesting relief.

Section 301.9100-3(c)(1)(i) provides, in part, that the Government's interests are considered 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). Additionally, § 301.9100-3(c)(1)(ii) provides, in part, that the Government's interests ordinarily are 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.

CONCLUSIONS

RULING REQUEST (1)

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 not to deduct the additional first year depreciation under § 168(k) for all classes of property placed in service by Taxpayer during the taxable year ended Date, that qualify for the additional first year depreciation deduction.

The § 168(k)(2)(D)(iii) election must be made by Taxpayer filing a federal income tax return for such taxable year, with a statement indicating that Taxpayer is electing not to deduct the additional first year depreciation for all classes of property placed in service during the taxable year ended Date. However, if Taxpayer has filed the federal income tax return for the taxable year ended Date, before the date of this letter, the election must be made by Taxpayer filing an amended federal income tax return for the taxable year ended Date. Taxpayer should attach a copy of this letter to the tax return. We have enclosed a copy for that purpose.

RULING REQUEST (2)

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 under § 59(e) to deduct ratably over a 10-year period research and experimental expenditures described in § 174.

The § 59(e) election must comply with the requirements of § 1.59-1(b). Section 1.59-1(b) requires, in part, that an election under section 59(e) 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 section 59(e) election begins. The statement must include the taxpayer's name, address, and taxpayer identification number, and the type and amount of qualified expenditures identified in section 59(e)(2) that the taxpayer elects to deduct ratably over the applicable period described in section 59(e)(1). Taxpayer should attach a copy of this letter to the tax return. We have enclosed a copy for that purpose.

This letter ruling does not grant an extension of time for filing Taxpayer's federal income tax return for the taxable year ended Date.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalties 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 provisions of the Code (including other subsections of § 168). Specifically, we express or imply no opinion on whether any item of depreciable property placed in service by Taxpayer during its taxable year ended Date, is eligible for the additional first year depreciation deduction, or whether Taxpayer satisfies the requirements of § 174(a) or § 59(e).

This letter ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By: _____
Brenda M. Stewart
Senior Counsel, Branch 6
Office of Associate Chief Counsel
Passthroughs & Special Industries

Enclosures (2):
Copy
Copy for § 6110 purposes

cc: