

**Internal Revenue Service**

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:ITA:B07  
PLR-126125-14

Date:  
December 11, 2014

Re:  
Request for Extension of Time to File Election

Taxpayer:

A:

B:

C:

Date:

Firm:

Individual:

Dear :

This letter responds to a letter dated July 2, 2014, submitted by Taxpayer requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an election under section 167(g)(7) of the Internal Revenue Code.

## FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is a limited liability company treated as a partnership for federal income tax purposes. The outstanding member interests in Taxpayer are owned by A and B. A, an entity disregarded for federal income tax purposes, and B, a corporation, are wholly owned by C. A is the tax matters partner for Taxpayer. Taxpayer uses an overall accrual method of accounting for federal income tax purposes.

Taxpayer, along with related entities, is an entertainment company that produces, among other things, motion picture films. In its taxable year ended Date, Taxpayer placed in service motion picture films for which it expects to pay participations and residuals before the end of the tenth taxable year ending following its taxable year ended Date. Taxpayer's federal tax return for the taxable year ended Date was prepared on a basis consistent with an election being made under section 167(g)(7) to include expected participations and residuals in the adjusted bases of the films placed in service in that taxable year for which the income forecast method is used.

Firm was engaged to prepare and electronically file Taxpayer's federal tax return for the taxable year ended Date. Individual, a senior tax manager employed by C, emailed a prepared section 167(g)(7) election statement on behalf of Taxpayer, to Firm before the extended due date of Taxpayer's federal tax return for the taxable year ended Date, and requested that this election statement be included with Taxpayer's return.

Taxpayer's federal tax return for the taxable year ended Date was filed electronically by Firm on its extended due date. Firm inadvertently failed to include the section 167(g)(7) election statement with Taxpayer's federal tax return. Firm noticed this error two days after Taxpayer's return for the taxable year ended Date was filed, and shortly thereafter informed Taxpayer of the inadvertent omission. Taxpayer requested Firm to prepare this request for relief under § 301.9100-3.

As of the date of this letter, the period of limitations on assessment under section 6501(a) has not expired for Taxpayer for the taxable year in which the elections should have been filed, or for any taxable year that would have been affected by the elections had the elections been filed in a timely manner.

## RULING REQUESTED

Taxpayer requests, for the taxable year ended Date, an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the election under section 167(g)(7) for certain films placed in service by Taxpayer during its taxable year ended Date.

## LAW AND ANALYSIS

Section 167(g)(7)(A) provides that for purposes of determining the depreciation deduction allowable with respect to income forecast property, the taxpayer may include participations and residuals with respect to the property in the adjusted basis of the property for the taxable year in which the property is placed in service, but only to the extent that the participations and residuals relate to income estimated to be earned in connection with the property before the close of the 10<sup>th</sup> taxable year following the taxable year in which the property was placed in service.

Section 167(g)(7)(B) defines participations and residuals, for purposes of section 167(g)(7), as costs the amount of which by contract varies with the amount of income earned in connection with the income forecast property.

Section 167(g)(7)(D)(i) provides that notwithstanding section 167(g)(7)(A), the taxpayer may exclude participations and residuals from the adjusted basis of income forecast property and deduct the participations and residuals in the taxable year that they are paid.

Notice 2006-47, 2006-1 C.B. 892, provides that the election to either include participations and residuals expected to be paid before the end of the tenth taxable year following the taxable year in which the property is placed in service in the adjusted basis of property for which the income forecast method of depreciation is used, or exclude participations and residuals from the adjusted basis of property for which the income forecast method of depreciation is used and deduct them in the taxable year in which the amounts are paid, must be made by the due date (including extensions) for the taxable year the income forecast property is placed in service. For each item of income forecast property placed in service in a taxable year, the taxpayer must attach a statement to the return for that year providing the name (or other unique identifying designation) of the property, stating how the taxpayer will treat participations and residuals, and providing the date the property was placed in service.

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 that granting relief will not prejudice the interests of the government.

## CONCLUSIONS

Based solely on the facts and the representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been met. Accordingly, Taxpayer is granted 60 calendar days from the date of this letter to make the election to include participations and residuals in adjusted basis for films placed in service during its taxable year ended Date for which the income forecast method of depreciation is used under section 167(g)(7). This election must be made separately for each affected property by Taxpayer filing an amended federal tax return for such taxable year, with a statement that Taxpayer is electing to include in adjusted basis in the year the income forecast property is placed in service all participations and residuals expected to be paid before the end of the tenth taxable year following the taxable year in which the property for which the income forecast method of depreciation is placed in service in its taxable year ended Date.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of the facts described above under any other provisions of the Code.

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

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

KARLA M. MEOLA  
Assistant to the Branch Chief, Branch 7  
Office of the Associate Chief Counsel  
(Income Tax & Accounting)

### Enclosures:

Copy of this letter  
Copy for section 6110 purposes

cc: