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Person To Contact:
, ID No.

Telephone Number:

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PLR-109030-15

Date: September 11, 2015

In Re: Request for extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election pursuant to § 59(e) of the Internal Revenue Code

LEGEND:

P =

S1 =

S2 =

S3 =

Date =

Dear :

This letter responds to a letter dated February 26, 2015, and supplemental correspondence, submitted by P on behalf of S1, S2, and S3 (hereinafter P, S1, S2, and S3 will be collectively referred to as Taxpayer), requesting an extension of time pursuant to §§ 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 deduct ratably over a 10-year period certain research and experimental (R&E) expenditures incurred in Taxpayer's taxable year ended Date.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is an affiliated group of corporations of which P is the common parent. Taxpayer uses the overall accrual method of accounting and files a consolidated federal income tax return on the basis of a fiscal year. Taxpayer is primarily in the businesses of (1) building efficiency, (2) automotive experience, and (3) power solutions.

Taxpayer timely filed its consolidated federal income tax return for its taxable year ended Date and intended to make an election under § 59(e) and § 1.59-1(b)(1) to deduct ratably over a 10-year period its R&E expenditures described in § 174(a). Taxpayer has made representations explaining why the election under § 59(e) was not timely filed.

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 also represents that it acted reasonably and in good faith and that granting relief will not prejudice 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)(1) 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 R&E expenditures).

Section 59(e)(1) allows a taxpayer to deduct R&E 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; 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(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.

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, the Commissioner grants Taxpayer an extension of time of 60 calendar days from the date of this letter to make the election under § 59(e) and § 1.59-1(b)(1) to deduct ratably over a 10-year period its R&E expenditures described in § 174(a) for its taxable year ended Date. The § 59(e) election must comply with the manner-of-election requirements of § 1.59-1(b)(1).

Taxpayer must attach a copy of this letter ruling to its amended consolidated federal income tax return. We have enclosed a copy for that purpose. Alternatively, if Taxpayer files its amended consolidated federal income tax return electronically, it may satisfy this requirement by attaching a statement to its amended 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 Taxpayer's representative 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 a ruling, it is subject to verification on examination.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provisions of the Code and the regulations thereunder. Specifically, we express or imply no opinion on 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 on file with this office, we are sending a copy of this letter ruling to Taxpayer's authorized representatives. We also are sending a copy of this letter to the appropriate Industry Director, LB&I.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: ________________________________
Jaime C. Park
Chief, Branch 6
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

cc: