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:

Telephone Number:

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PLR-119271-19

Date:
February 13, 2020

LEGEND

P	=
X1	=
X2	=
X3	=
X4	=
X5	=
X6	=
X7	=
X8	=
Taxable Year	=
Countries	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Firm A	=
Firm B	=
Prior Years	=

Dear :

This letter ruling responds to a letter dated August 5, 2019, and supplemental correspondence, submitted by and on behalf of P and its affiliated entities, X1, X2, X3, X4, X5, X6, X7, and X8 (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 (1) an election not to deduct the additional first year depreciation under § 168(k) of the Internal Revenue Code for all classes of qualified property placed in service in the Taxable Year and (2) an election under § 59(e) to amortize qualified mining exploration and qualified development expenditures incurred in the Taxable Year over a ten-year period.

All references in this letter to § 168(k) are treated as a reference to § 168(k) as in effect: (i) prior to amendment by the Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (December 22, 2017) (TCJA), and after amendment by § 143(b) of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), enacted as part of the Consolidated Appropriations Act, 2016, Division Q, Pub. L. 114-113, 129 Stat. 2242 (December 18, 2015), for property placed in service after December 31, 2015 and acquired before September 28, 2017. See § 143(b)(7)(A) of the PATH Act; or (ii) after amendment by § 13201 of the TCJA for property acquired and placed in service after September 27, 2017. See § 13201(h)(1) of the TCJA, as applicable.

FACTS

P represents that the facts are as follows:

P is the common parent of an affiliated group of corporations that includes X1, X2, X3, X4, X5, X6, X7, and X8, and that files a consolidated federal income tax return. Taxpayer uses an accrual method of accounting. Taxpayer is a mining company that owns and operates precious metal mines and various exploration projects in Countries.

Due to large losses incurred by Taxpayer, it desired to choose to make the election under § 168(k)(7) not to deduct additional first year depreciation for the Taxable Year and to elect under § 59(e) to amortize its qualified mining exploration and qualified development expenditures incurred during the Taxable Year over a ten-year period. Taxpayer has in prior years timely elected under § 59(e) to amortize its qualified mining exploration and qualified development expenditures over ten years.

P had engaged Firm A to perform income tax compliance services for the Prior Years. After ending its tax services engagement with Firm A, on Date 1, P engaged Firm B to prepare its U.S. tax returns for the Taxable Year. Upon being engaged, Firm B promptly requested that Firm A transfer Taxpayer's electronic tax file information to Firm B in order to electronically file with the IRS. Despite multiple requests, Firm B did not obtain the information by the due date for filing IRS Form 7004, Application for Automatic Extension of Time, for the Taxable Year.

As a result, Firm B determined it was most efficient to prepare P's Form 7004 for the Taxable Year in a PDF format and requested that P file the form by mail before the deadline. Firm B emailed a PDF copy of the completed Form 7004 to P on Date 2, together with six state tax extension forms. P timely mailed all state extensions, but

unbeknownst to both P and Firm B, P either inadvertently failed to mail the Form 7004 or failed to retain proof of such mailing.

Not realizing that Form 7004 was not filed, P filed IRS Form 1120 by Date 3, with all required forms and statements attached, including the election under § 168(k)(7) not to deduct additional first year depreciation and the election under § 59(e) to amortize mining exploration and developments expenditures over ten years.

On Date 4, P received a notice from the IRS indicating that the tax return for the Taxable Year was late because the IRS did not have a record of receiving P's Form 7004 for the Taxable Year on or before the due date for such form.

Upon receiving this information and reviewing its records, P located its registered mail receipts providing it had timely mailed all of its state tax extension forms; however, P was unable to locate any proof of mailing related to its Form 7004 for the Taxable Year.

RULING REQUESTED

Accordingly, Taxpayer requests an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make the election not to deduct the additional first year depreciation under § 168(k) for all classes of qualified property placed in service by P, X6, X7, and X8 in the Taxable Year and to make the election under § 59(e) to amortize mining exploration and development expenditures incurred by Taxpayer for the Taxable Year ratably over ten years.

LAW AND ANALYSIS

Section 168(k)(1) allows, in the taxable year that qualified property is placed in service, a 50-percent (or 100-percent upon amendment by §13201 of the TCJA) additional first year depreciation deduction for qualified property placed in service by the taxpayer during the Taxable Year.

Section 168(k)(7) allows a taxpayer to elect out of additional first year depreciation for any class of property placed in service during the taxable year.

For property acquired before September 28, 2017, section 4.04 of Rev. Proc. 2017-33, 2017-19 I.R.B. 1236, 1240, provides guidance regarding the election under § 168(k)(7) not to deduct the additional first year depreciation (the § 168(k)(7) election). Section 4.04(1) of Rev. Proc. 2017-33 provides that the rules for making the § 168(k)(7) election are similar to the rules for making the election under § 168(k)(2)(D)(iii) as in effect before the enactment of the PATH Act. As a result, the § 168(k)(7) election applies to all qualified property that is in the same class of property and placed in service in the same taxable year. Section 4.04(2) of Rev. Proc. 2017-33 provides that rules generally similar to the rules in § 1.168(k)-1(e)(2), (3), (5) and (7) of the Income Tax Regulations apply for purposes of § 168(k)(7) (prior to TCJA).

Section 1.168(k)-1(e)(2) defines the term “class of property” as meaning, among other things, each class of property described in § 168(e) (for example, 5-year property). As a result of the amendments to § 168(k) by § 143(b) of the PATH Act, the term “class of property” also includes qualified improvement property as defined in § 168(k)(3) and depreciated under § 168.

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 the Taxable Year 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 1.168(k)-1(e)(7)(i) provides that an election not to deduct the additional first year depreciation for a class of property that is qualified property, once made, may be revoked only with the written consent of the Commissioner of Internal Revenue. To seek the Commissioner's consent, the taxpayer must submit a request for a letter ruling.

For property acquired after September 27, 2017, § 1.168(k)-2(f)(1) provides the rules for making the § 168(k)(7) election. Pursuant to § 1.168(k)-2(f)(1)(i), the § 168(k)(7) election applies to all qualified property that is in the same class of property and placed in service in the same taxable year.

Section 1.168(k)-2(f)(1)(ii) defines the term “class of property” as meaning, among other things, each class of property described in § 168(e) (for example, 5-year property). The term “class of property” also includes qualified improvement property that is acquired by the taxpayer after September 27, 2017, and placed in service by the taxpayer after September 27, 2017, and before January 1, 2018.

Section 1.168(k)-2(f)(1)(iii) provides the time and manner of making the § 168(k)(7) election. The rules in § 1.168(k)-2(f)(1)(iii) are similar to the above-mentioned rules in § 1.168(k)-1(e)(3).

Section 616(a) allows a taxpayer, in general, to deduct expenditures paid or incurred during the taxable year for the development of a mine or other natural deposit (other than an oil or gas well) if paid or incurred after the existence of ores or minerals in commercially marketable quantities has been disclosed.

Section 617(a) allows a taxpayer, in general, an election to deduct expenditures paid or incurred during the taxable year for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral; and paid or incurred before the beginning of the development stage of the mine. Section 617(a) further provides that in no case shall this subsection apply with respect to amounts paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of oil or gas or of any mineral with respect to which a deduction for percentage depletion is not allowable under § 613.

Section 1.617-1(c)(1) provides that a taxpayer may elect to deduct exploration expenditures by deducting the expenditures either in the taxpayer's return for such taxable year or in an amended return filed before the expiration of the period for filing a claim for credit or refund of income tax for such taxable year. Section 1.617-1(c)(1)(ii) requires a taxpayer who makes an election to deduct the expenditures to state clearly on the taxpayer's income tax return for each taxable year for which the taxpayer deducts exploration expenditures the amount of the deduction claimed under § 617(a) with respect to each property or mine.

Section 1.617-1(c)(2) provides that the election under § 617(a) may be made at any time before the expiration of the period prescribed for filing a claim for refund of the tax imposed by chapter 1 for the first taxable year for which the taxpayer desires to deduct exploration expenditures under § 617(a).

Section 59(e)(1) allows a taxpayer, in general, to deduct ratably over the 10-year period any qualified expenditure to which an election under § 59(e) applies, beginning with the taxable year in which such expenditure was made.

Section 59(e)(2)(D) 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 § 616(a) (relating to the development of a mine or other natural deposits).

Section 59(e)(2)(E) 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 § 617(a) (relating to exploration for ore or other mineral deposits).

Section 59(e)(3) specifically prohibits the deduction of the qualified expenditures under any other section of the Code if the option under § 59(e) is elected.

Section 59(e)(4)(A) provides that an election under § 59(e)(1) may be made with respect to any portion of any qualified expenditure.

Section 59(e)(4)(B) provides that an election made under § 59(e) may be revoked only with the consent of the Secretary.

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 and include certain required information.

Section 1.59-1(b)(2) provides, in part, that a taxpayer may make an election under § 59(e) with respect to any portion of any qualified expenditure paid or incurred by the taxpayer in the taxable year to which the election applies. An election under § 59(e) must be for a specific dollar amount and the amount subject to an election under § 59(e) may not be made by reference to a formula.

Under § 301.9100-1(a), 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.

Section 301.9100-1(b) provides that the term "regulatory election" includes an election whose due date is prescribed by a regulation published in the Federal Register.

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 rules for requesting extensions of time for regulatory 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.

CONCLUSION

Based solely on the information submitted and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Taxpayer is granted an extension of time to make (1) the election not to deduct the additional first year depreciation under § 168(k) for all classes of qualified property placed in service by P, X6, X7, and X8 in the Taxable Year, and (2) the election under § 59(e) to deduct development and mining exploration expenditures described in §§ 616(a) and 617(a) incurred by Taxpayer for the Taxable Year ratably over a 10-year period. In this regard, we will consider these elections made by Taxpayer on P's

consolidated federal income tax return for the Taxable Year filed on Date 3, to be timely made.

Except as specifically ruled upon above, no opinion is expressed or implied concerning the tax consequences of the facts described above under any other provisions of the Code (including other subsections of § 168). Specifically, no opinion is expressed or implied on (1) whether any item of depreciable property placed in service by Taxpayer in the Taxable Year, is eligible for the 50-percent or 100-percent additional first year depreciation deduction under § 168(k) or (2) whether Taxpayer's classification of any item of depreciable property under § 168(e) or Rev. Proc. 87-56, 1987-2 C.B. 674, is correct. Furthermore, we express or imply no opinion on whether Taxpayer satisfies the requirements of § 59(e), § 616(a), or § 617(a).

Moreover, this letter ruling does not grant an extension of time for filing P's consolidated federal income tax return for the Taxable Year.

The rulings contained in this letter are based upon information and representations submitted by P and accompanied by penalty of perjury statements 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.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter ruling is being sent to your authorized representatives. We also are sending a copy of this letter ruling to the appropriate operating division director.

A copy of this letter must be attached to any federal income tax return to which it is relevant. Alternatively, a taxpayer filing its federal return electronically may satisfy this

requirement by attaching a statement to the return that provides the date and control number of the letter ruling.

Sincerely,

Kathleen Reed

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

Enclosures (2):

Copy for section 6110 purposes
Copy of this letter

cc: