INTERNAL REVENUE SERVICE

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(202) 622-3110

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Sept.14, 2000

In re: Section 197 Retroactive Election

LEGEND:
Taxpayer =
(EIN:)
D1 =
D2 =
D3 =

Dear Mr. :

This letter responds to your request dated December 2, 1999, submitted on behalf of Taxpayer requesting an extension of time to make a retroactive election under §1.197-1T(c) of the Temporary Income Tax Regulations.

Taxpayer acquired assets on D1, subject to additional contingent consideration to be paid at intervals after the acquisition. All consideration paid on D1 was allocated to tangible assets or inventory. The contingencies were met and Taxpayer paid additional consideration on D2. The additional consideration was allocated to intangible assets. Taxpayer did not make a retroactive election on its tax return for the taxable year ended D3 for its acquisition of the assets. Taxpayer's taxable years ending D2 and subsequent are open tax years.

Generally, if a taxpayer acquired, between July 25, 1991 and August 10, 1993, intangible property that otherwise met the definition of a section 197 intangible, then the taxpayer could make an election to treat all qualifying intangibles as subject to section 197 treatment. (See, Temporary Regulations §1.197-1T).

Section 1.197-1T(c)(3) provides that the retroactive election must be made by the due date (including extensions of time) of the electing taxpayer's Federal income tax return for

the election year. If, however, the taxpayer's Federal income tax return for the election year is filed before April 14, 1994, the election may be made by amending that return no later than September 12, 1994. Section 1.197-1T(b)(5) provides that the term "election year" means the taxable year that includes August 10, 1993. Taxpayer's election year was the taxable year ending D4. Taxpayer did not make a section 197 election for the taxable year ending D4 because its internal tax professional was unaware of the above-cited regulation.

Section 1.197-1T(c)(3)(ii) provides that the retroactive election is made by attaching the election statement described in §1.197-1T(e) to the taxpayer's original or amended income tax return for the election year. Section 1.197-1T(c)(3)(iii) provides that an attempted election that does not satisfy the requirements of §1.197-1T(c)(3) is not valid.

Section 1.197-1T(e)(1) provides that for an election under §1.197-1T(c) to be valid, the electing taxpayer must file with its Federal income tax return for the election year a written election statement, as an attachment to Form 4562 (Depreciation and Amortization), that satisfies the requirements of §1.197-1T(e)(2). The electing taxpayer must also forward a copy of the election statement to the Statistics Branch (QAM:S:6111), IRS Ogden Service Center, ATTN: Chief, Statistics Branch, P.O. Box 9941, Ogden, UT 84409.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides that 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) defines a regulatory election as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

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 section 301.9100-2.

Requests for relief under §301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-

3(a).

Based solely on the facts and the representations made, the requirements of §§301.9100-1 and 301.9100-3 have been met. Consequently, Taxpayer is granted an extension of time for making the retroactive election under §1.197-1T(c), until 60 days following the date of this letter. Taxpayer must file the election with its amended Federal income tax return for its taxable year ended on D3 and must comply with all the requirements of §§1.197-1T(c)(2)(ii),(c)(4) and (e). In addition, a copy of this letter along with a copy of the election should be sent to the District Director. A copy is enclosed for that purpose.

Except as specifically ruled upon above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above. Specifically, we express no opinion concerning whether the allocation of consideration to intangible assets is proper.

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

We are sending a copy of this letter to the District Director, Pacific Northwest District. In accordance with the power of attorney on file with this office, a copy of this letter is being sent to Taxpayer.

Sincerely yours,

PAUL F. KUGLER
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures:
Copy of this letter
Copy for section 6110 purposes