

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

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Refer Reply To:
CC:PSI:6 PLR-101085-00
Date:
January 12, 2001

Legend:

Taxpayer =

Y =

Z =

Industry Director =

N1 =

N2 =

D1 =

D2 =

D3 =

D4 =

D5 =

Dear :

This letter responds to a letter dated D4, and supplemental information, submitted on behalf of Taxpayer, in its capacity as successor to X and Y, requesting an extension of time pursuant to section 301.9100-3 of the Procedure and Administration Regulations to file an election for amortization under section 169 of the Internal Revenue Code.

Facts

Taxpayer represents that the facts are as follows:

X did not elect under section 169 to amortize N1 pollution control facilities that were placed in service by X during the taxable years D2 through D3. All of these facilities, except Z, have been certified by the respective state agencies. Y also did not elect under section 169 to amortize N2 pollution control facilities that were placed in

PLR-101085-00

service by Y during the taxable years D1 and D2. X and Y's facilities have not yet been certified by the Environmental Protection Agency ("EPA").

Law and Analysis

Section 169(a) provides, in part, that a taxpayer may elect to take a deduction with respect to the amortization of the amortizable basis of any certified pollution control facility (as defined in section 169(d)), based on a period of 60 months.

Section 169(b) provides that the election of the taxpayer to take the amortization deduction and to begin the 60-month period with the month following the month in which the facility is completed or acquired, or with the taxable year in which such facility is completed or acquired, shall be made by filing with the Secretary, in such manner, in such form, and within such time, as the Secretary may by regulations prescribe, a statement of such election.

Section 1.169-4(a)(1) of the Income Tax Regulations provides that the election of the taxpayer made under section 169(b) shall be made by a statement of such election attached to its return for the taxable year in which falls the first month of the 60-month amortization so elected. Such statement must include the information specified in section 1.169-4(a)(1)(i) through (ix).

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 section 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 section 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. Section 301.9100-3(a).

Section 301.9100-3(d)(2) provides that for relief to be granted, the IRS may require the taxpayer to consent under section 6501(a) to an extension of the period of limitations on assessment for the taxable year in which the regulatory election should have been made and any taxable year that would have been affected by the election

PLR-101085-00

had it been timely made.

Conclusions

Based solely on the facts and representations made, the requirements of sections 301.9100-1 and 301.9100-3 have been met. Consequently, Taxpayer is granted an extension of time for making the election under section 169 for the certified pollution control facilities subject to Taxpayer's letter ruling request dated D4, until 60 calendar days following the date of this letter. The elections must be filed with the amended federal income tax returns for the taxable years in which fall the first month of the 60-month amortization period elected by Taxpayer and must comply with the requirements of section 1.169-4(a)(1), including the information required by section 1.169-4(a)(1)(i) through (ix). These elections will apply only to those pollution control facilities that are eventually certified by the respective state agencies and the EPA. In addition, a copy of this letter along with a copy of the election must be sent to the Industry Director. A copy is enclosed for that purpose.

If the period of limitations on assessment for the taxable years in which the elections should have been made or for any taxable year that would have been affected by the elections had they been timely made will expire before Taxpayer has filed the certifications from the EPA with the appropriate Service official in the operating division that has examination jurisdiction over Taxpayer's federal tax returns, Taxpayer must consent under section 6501(a) to an extension of the period of limitations on assessment for such taxable years.

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 on whether the facilities are certified pollution control facilities as defined in section 169(d).

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

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

Enclosures: Copy of this letter
Copy for section 6110 purposes