

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:6-GENIN-138957-03

Date:

October 28, 2003

In re:

Request to Make a Late Section 179 Election

Dear

This letter is in response to your letters dated February 11, 2003, and June 11, 2003, to the Commissioner of Internal Revenue, requesting permission to make a late election under section 179 of the Internal Revenue Code for certain property on your 1999 federal income tax return filed on April 15, 2000. In order for us to respond to your specific request, you must submit a request for a private letter ruling. The request must comply with all the requirements of section 8 of Revenue Procedure 2003-1, 2003-1 I.R.B. 1. A copy of selected selections of Rev. Proc. 2003-1 has been enclosed for your reference. We hope that you find the following general information to be helpful.

We are enclosing a copy of section 179 of the Code and the regulations under that section. Section 1.179-5(a) of the Income Tax Regulations provides that the election under section 179 to claim a section 179 expense deduction for section 179 property shall be made on the taxpayer's first income tax return for the taxable year to which the election applies or on an amended return filed within the time prescribed by law (including extensions) for filing the return for such taxable year. Thus the request to make a late section 179 election for certain property is a request for an extension of time to make an election under section 179 for that property. This request for an extension of time to make a regulatory election must meet the requirements of section 301.9100-3 of the regulations. We are also enclosing a copy of section 301.9100-3. Under section 301.9100-3(a), requests for relief will be granted when the taxpayer provides the evidence 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. Because the election under section 179 is an accounting method election, Section 301.9100-3(c)(2), special rules for accounting method

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regulatory elections, should be of particular interest. Under section 301.9100-3(c)(2), the interests of the Government are deemed to be prejudiced except in unusual and compelling circumstances (Emphasis added). Section 301.9100-3(e)(5) provides that a request under section 301.9100-3 is a request for a ruling letter.

Further, we wish to note that the running of any applicable period of limitations is not suspended for the period during which a section 301.9100 request has been filed and that if the period of limitation on assessment under section 6501(a) of the Code for the taxable year in which an election should have been made or any taxable year that would have been affected by the election had it been timely made will expire before receipt of a section 301.9100 letter ruling, the Service will not ordinarily issue a section 301.9100 ruling. Therefore, a taxpayer must secure a consent under section 6501(c)(4) to extend the period of limitation on assessment. Note that the filing of a claim for refund under section 6511 does not extend the period of limitation on assessment. See section 5.02(2) of Rev. Proc. 2003-1.

Rev. Proc. 2003-1 provides the general procedures the Internal Revenue Service follows in issuing private letter rulings and the related instructions for the submission of private letter ruling requests by taxpayers. In addition, taxpayers are required by statute to pay user fees for requests for private letter rulings. Under section 15 of Rev. Proc. 2003-1, the user fee must accompany the request in order to be processed by the Service. In general, the user fee is \$6,000 for private letter rulings. However, there is a reduced fee of \$500 for a request involving a business-related tax issue from a taxpayer with a gross income of less than \$1 million. See Appendix A of Rev. Proc. 2003-1.

If you should decide to request a private letter ruling, section 8.03(1) of Rev. Proc. 2003-1 provides information as to where to send the request. Also, as we have noted above, section 8 of Rev. Proc. 2003-1 provides general instructions for requesting a private letter ruling.

This letter has called your attention to certain general principles of tax law. It is intended for informational purposes only and does not constitute a ruling. See sections 2.01 and 2.04 of Rev. Proc. 2003-1. We hope the materials enclosed will be helpful to you; however, if you should have any additional questions or comments, please contact our office at [REDACTED]

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 yours,

Charles B. Ramsey
CHARLES B. RAMSEY
Chief, Branch 6
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (4)