



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

July 30, 2009

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UIL: 174.05-00

Dear _____ :

This letter responds to your request for information dated June 05, 2009, in which you seek to adopt the method described in section 174(a) of the Internal Revenue Code to treat research and experimental expenditures (R&E expenditures) as deductible expenses and not chargeable to capital account.

Section 174(a) provides that a taxpayer may elect to treat R&E expenditures as expenses not chargeable to capital account. Expenditures to which the election applies are allowed as a deduction. A taxpayer may elect this method without the consent of the Secretary of the Treasury for the taxpayer's first taxable year in which R&E expenditures are paid or incurred. If the taxpayer elects this method, the method will apply to all R&E expenditures paid or incurred by the taxpayer for the tax year and must be adhered to for all subsequent years unless, with permission of the Secretary, a change is authorized for all or part of such R&E expenditures. The statute also provides that a taxpayer may adopt this method at any time with the consent of the Secretary.

Section 1.174-1 of the Income Tax Regulations provides that, if the taxpayer does not elect to expense under section 174(a) or defer and amortize expenses under section 174(b) for the first taxable year in which R&E expenditures are paid or incurred, R&E expenditures must be charged to capital account. Section 1.174-1 also clarifies that R&E expenditures to which section 174 applies may relate to a general research program or to a particular project.

Section 1.174-3 of the Income Tax Regulations provides rules for making the election to expense R&E expenditures under section 174(a) and for requesting permission to change to or from that method. Section 1.174-3(a) provides that if a taxpayer adopts the method provided in section 174(a), the method applies to all R&E expenditures paid or incurred in the taxable year of adoption and all subsequent taxable years unless a different method is authorized by the Commissioner of Internal Revenue under section 174(a)(3) with respect to part or all of the R&E expenditures. Section 1.174-3(b)

provides that the consent of the Commissioner is not required if the taxpayer adopts the method for the first taxable year in which the taxpayer pays or incurs R&E expenditures. However, if the taxpayer fails to adopt the method for the first taxable year in which the taxpayer incurs R&E expenditures, the taxpayer cannot do so in subsequent taxable years without obtaining the consent of the Commissioner. In addition, a taxpayer may not use, in the same tax year, more than one method for any particular project.

In Revenue Procedure 2008-52, 2008-36 I.R.B. 587 (September 8, 2008), the IRS provides procedures under which a taxpayer may obtain the automatic consent of the Commissioner to change certain methods of accounting, including the procedures for taxpayers to obtain automatic consent to change their treatment of R&E expenditures. Section 6 of Revenue Procedure 2008-52 includes the "General Application Procedures." Appendix Section 7.01 of Revenue Procedure 2008-52 includes additional specific procedures for taxpayers to obtain automatic consent to change their treatment of R&E expenditures. The URL for Revenue Procedure 2008-52 is http://www.irs.gov/irb/2008-36_IRB/ar09.html.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. This letter is advisory only and has no binding effect on the Internal Revenue Service. See Rev. Proc. 2009-1, §2.04, 2009-1 I.R.B. 1 (Jan. 5, 2009). If you have any additional questions, please contact _____ of our office at _____.

Sincerely,

Paul F. Handleman
Chief, Branch 5
Office of Associate Chief Counsel
(Passthroughs & Special Industries)