

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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PLR-131524-08
Date:
November 06, 2008

LEGEND:

Taxpayer = (EIN:)
X =
Unit =
Refinery =
State =
Date 1 =
Date 2 =
Date 3 =
Year =

Dear :

This responds to a letter dated , from your representatives requesting permission, under § 301.9100-(1)(a) of the Procedure and Administration Regulations for an extension of time to make an election under § 1.169-4 of the Treasury Regulations.

X, an indirect wholly-owned subsidiary of Taxpayer and a member of Taxpayer's consolidated group, placed the Unit into service at its Refinery on Date 1. Taxpayer filed an application for certification of Unit as a pollution control facility with the appropriate State agency on Date 2.

On Taxpayer's Year federal income tax return, Taxpayer filed an election to amortize the cost of the Unit under section 169 of the Code. Because the Unit had not yet been certified by the Environmental Protection Agency (EPA) as required at the time the Taxpayer's Year tax return was filed, Taxpayer filed a statement that the application had been made to the proper State certifying authority.

Taxpayer did not receive the final EPA Certification until after Date 3. Due to an administrative oversight, Taxpayer did not file this Certification with the district director, or with the director of the IRS service center with whom its initial return was filed within 90 days of receipt as required. When the Taxpayer discovered this oversight it filed this request for relief and submitted the Certification.

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 § 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 by the taxpayer to take an amortization deduction with respect to a certified pollution control facility and to begin the 60-month amortization period (either with the month following the month in which the facility is completed or acquired, or with the first month of the taxable year succeeding the taxable year in which such facility is completed or acquired) shall be made by a statement to that effect attached to its return for the taxable year in which falls the first month of the 60-month amortization period so elected. Such statement must include the information specified in § 1.169-4(a)(1)(i) through (ix).

Under § 301.9100-1(c), the Commissioner in exercising the Commissioner's discretion may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I.

Sections 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a).

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 § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(d)) 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. Section 301.9100-3(a). Section 301.9100-3(b) provides, in relevant part, that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based solely on the facts and 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 election under § 169 for the certified pollution control facility, until 60 calendar days following the date of this letter. The election must be filed with the amended federal income tax returns for the taxable year in which falls the first month of the 60-month amortization period elected by Taxpayer and must comply with the requirements of § 1.169-4(a)(1), including the information required by § 1.169-4(a)(1)(i) through (ix). This election will apply only to the pollution control facility that is 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 year in which the election should have been made or for any taxable year that would have been affected by the election had they been timely made will expire before Taxpayer has filed the certification 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 § 6501(a) to an extension of the period of limitations on assessment for such taxable year.

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 § 169(d).

This letter ruling is directed only to the taxpayer who requested 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 ruling letter is being sent to your authorized representatives.

Sincerely,

Curt G. Wilson
Deputy Associate Chief Counsel
(Passthroughs and Special Industries)