

In Year 1 and Year 2, Taxpayer paid or incurred QER expenditures. Tax Professional prepared Taxpayer's federal income tax returns for Year 1 and Year 2, but did not file a §198 election for the QER expenditures for Year 1 or Year 2. The QER expenditures were capitalized to the land and the buildings under development. Taxpayer represented that it reasonably relied on a qualified tax professional, Tax Professional, and Tax Professional failed to make (or advise Taxpayer to make) the election. Taxpayer represented that it was not aware of the availability of the §198 election at the time the Year 1 and Year 2 returns were filed.

Section 198 of the Code provides, in part, that a taxpayer may elect to treat any QER expenditure which is paid or incurred by the taxpayer as an expense which is not chargeable to capital account. Any expenditure which is so treated shall be allowed as a deduction for the taxable year in which it is paid or incurred.

Under § 198(b), a "qualified environmental remediation expenditure" means any expenditure which is otherwise chargeable to capital account and which is paid in connection with the abatement or control of hazardous substances at a qualified contaminated site.

Rev. Proc. 98-47 provides the procedures for taxpayers to make the election under § 198 to deduct any QER expenditures. Under § 3.01 of Rev. Proc. 98-47, the election must be made on or before the due date (including extensions) for filing the income tax return for the taxable year in which the qualified environmental remediation expenditures are paid or incurred. Additionally, the §198 election for one year has no effect for other years. Thus a taxpayer must make a §198 election for each year in which the taxpayer intends to deduct QER expenditures.

Section 301.9100-1 of the Regulations generally provides an extension of time for making regulatory elections. For this purpose, § 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.

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections 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 granting relief will not prejudice the interests of the Government.

Section 301.9100-3(c)(1) provides that the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief. Generally, the interests of the Government are prejudiced if (i) granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money) or (ii) if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section. However, the IRS may condition a grant of relief on the taxpayer providing the IRS with a statement from an independent auditor (other than an auditor providing an affidavit pursuant to § 301.9100-3(e)(3)) certifying that the interests of the Government are not prejudiced under the standards set forth in § 301.9100-3(c)(1)(i).

The information and representations Taxpayer and Tax Professional submitted explaining the circumstances that resulted in the failure to timely file the § 198 election demonstrate that Taxpayer acted reasonably and in good faith as it reasonably relied on Tax Professional, a qualified tax professional. Tax Professional has provided a statement certifying that the interests of the Government are not prejudiced under the standards set forth in § 301.9100-3(c)(1)(i).

Based solely on the facts and representations submitted, we conclude that Taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government, satisfying the requirements of § 301.9100-3.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed as to whether the expenditures discussed in this ruling constitute QER expenditures under §198 of the Code.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

This letter is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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 letter is being sent to your authorized representative.

Sincerely,

Lewis K. Brickates
Branch Chief, Branch 1
(Income Tax & Accounting)