

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:5

PLR-127802-16

Date: March 3, 2017

Legend:

Taxpayer:

Year 1:

Year 2:

Year 3:

X:

Railroad 1:

Railroad 2:

Railroad 3:

Railroad 4:

Railroad 5:

Dear _____ :

This responds to a letter dated September 6, 2016, together with subsequent correspondence, submitted on behalf of Taxpayer by its authorized representative, requesting and extension of time under § 301.9100-1 of the Procedure and Administration Regulations to file Form 8900, Qualified Railroad Track Maintenance Credit, for Year 1 and Year 2.

Taxpayer, the common parent of an affiliated group, is primarily engaged in the business of railroad transportation. X is Taxpayer's principal operating subsidiary, and is classified as a Class I railroad by the Surface Transportation Board (STB). Railroad 1, Railroad 2, Railroad 3, Railroad 4, and Railroad 5, are members of Taxpayer's consolidated group and are classified as Class II or Class III railroads by the STB. For purposes of filing Form R-1, Railroad Annual Report, the STB requires consolidated reporting for each group of railroads that operate as a single, integrated United States rail system whose cumulative operating revenues meet the Class I threshold. In compliance with this STB requirement, X timely filed Form R-1 for Year 1 and Year 2 as if all of its subsidiary railroads consisted of a single consolidated Class I railroad.

In Year 1, Railroad 3 incurred railroad track maintenance expenditures. In Year 2, Railroad 1, Railroad 2, Railroad 3, Railroad 4, and Railroad 5 incurred railroad track maintenance expenditures.

After filing its Year 1 and Year 2 income tax returns, Taxpayer and Taxpayer's tax counsel learned that the STB's requirements for integrated railroads to file Form R-1 as a consolidated Class I railroad was for revenue measurement purposes only and did not otherwise affect the STB's classification designation of the individual railroads in the consolidated R-1 reporting group.

In Year 3, Taxpayer filed an amended income tax return for Year 1 on which it made a protective claim for refund relating to the railroad track maintenance credit for railroad track maintenance expenditures incurred by Railroad 1. Also in Year 3, Taxpayer filed an amended income tax return for Year 2 on which it made a protective claim for refund relating to the railroad track maintenance credit for railroad track maintenance expenditures incurred by Railroad 1, Railroad 2, Railroad 3, Railroad 4, and Railroad 5.

Taxpayer requests a ruling that it be granted an extension of time under § 301.9100-1 to file Form 8900, Qualified Railroad Track Maintenance Credit, for Year 1 and Year 2.

Under § 45G(a) of the Internal Revenue Code, the railroad track maintenance credit for the taxable year is equal to 50 percent of the qualified railroad track maintenance expenditures paid or incurred by an eligible taxpayer during the taxable year.

Under § 45G(c), the term “eligible taxpayer” means any Class II or Class III railroad, and any person who transports property using the rail facilities of a Class II or Class III railroad, or who furnishes railroad-related property or service to a Class II or Class III railroad, but only with respect to miles of railroad track assigned to such person by the Class II or Class III railroad.

Section 1.45G-1(a) of the Income Tax Regulations requires that a taxpayer claiming the railroad tax maintenance credit must do so by filing Form 8900 with its timely filed (including extensions) Federal income tax return for the taxable year the railroad track maintenance credit is claimed.

Section 301.91001-(c) provides that the Commissioner 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.

Section 301.9100-1(b) provides that the term “regulatory election” means 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 301.9100-2 and 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 for making elections that do not meet the requirements of § 301.9100-2. A request for relief under § 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.

In this case, Taxpayer made protective claims for refund for Year 1 and Year 2 relating to the railroad tax maintenance credit. Based solely on the facts and representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Taxpayer’s Form 8900 will be considered timely filed for Year 1 and Year 2 for purposes of § 1.45G-1(a) if they are filed no later than 120 days after the date of this letter. A copy of this letter should be sent to the appropriate service center with a request that it be attached to Taxpayer’s amended tax returns for Year 1 and Year 2. Alternatively, taxpayers filing their returns electronically may satisfy

this requirement by attaching a statement to their returns that provides the date and control number of the letter ruling.

Except as specifically set forth above, we express no opinion concerning the Federal income tax consequences of the facts described above under any provisions of the Code. In particular, we express no opinion on whether the claimed expenditures qualify for the railroad track maintenance credit.

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

The rulings contained in this letter are based upon information and representations submitted by the 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 rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Taxpayer's authorized representative.

Sincerely,

Theresa Melchiorre
Assistant to the Branch Chief, Branch 5
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure (1)

Copy for section 6110 purposes