

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:B06

PLR-139691-16

Date: May 12, 2017

In Re: Request for extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election pursuant to § 59(e) of the Internal Revenue Code

LEGEND:

P =

S =

Date A =

Date B =

Date C =

Date D =

Date E =

Dear :

This letter responds to a letter dated December 14, 2016, and supplemental correspondence, submitted by P on behalf of S (hereinafter P and S will be collectively referred to as Taxpayer), requesting an extension of time pursuant to §§ 301.9100-1

and 301.9100-3 of the Procedure and Administration Regulations to make elections under § 59(e) of the Internal Revenue Code and § 1.59-1(b)(1) of the Income Tax Regulations to deduct ratably over a 60-month period its intangible drilling and development costs (IDC) described in § 263(c) for its taxable years ended Date A, Date B, Date C, Date D, and Date E.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is an affiliated group of corporations of which P is the common parent. Taxpayer uses the overall accrual method of accounting and files a consolidated federal income tax return on the basis of a calendar year. Taxpayer is primarily in the business of oil and gas exploration and production.

Taxpayer timely filed its consolidated federal income tax returns for its taxable years ended Date A, Date B, Date C, Date D, and Date E and intended to make elections under § 59(e) and § 1.59-1(b)(1) to deduct ratably over a 60-month period its IDC described in § 263(c). Taxpayer has made representations explaining why the statements required to make the elections under § 59(e) and § 1.59-1(b)(1) were not timely filed.

Taxpayer represents that granting the relief requested will not result in Taxpayer having a lower tax liability in the aggregate for the tax years affected by the elections than Taxpayer would have had if the elections had been timely made (taking into account the time value of money). Taxpayer also represents that it acted reasonably and in good faith and that granting relief will not prejudice the interests of the Government.

LAW

Section 59(e)(1) allows a taxpayer to deduct ratably over a specified period any qualified expenditure to which an election under § 59(e)(1) applies.

Section 59(e)(2) includes in the definition of "qualified expenditure" any amount which, but for an election under § 59(e), would have been allowable as a deduction (determined without regard to § 291) for the taxable year in which paid or incurred under § 263(c) (relating to IDC).

Section 59(e)(1) allows a taxpayer to deduct IDC ratably over the 60-month period beginning with the month in which such expenditure was paid or incurred.

Section 59(e)(3) specifically prohibits the deduction of the qualified expenditures under any other section of the Code if this option is elected. Section 59(e)(4)(A) allows

a taxpayer to make an election under § 59(e)(1) for any portion of any qualified expenditure.

Section 1.59-1(b)(1) prescribes the time and manner of making the election under § 59(e). According to § 1.59-1(b)(1), an election under § 59(e) shall only be made by attaching a statement to the taxpayer's income tax return (or amended return) for the taxable year in which the amortization of the qualified expenditures subject to the § 59(e) election begins. The taxpayer must file the statement no later than the date prescribed by law for filing the taxpayer's original income tax return (including any extensions of time) for the taxable year in which the amortization of the qualified expenditures subject to the § 59(e) election begins. Additionally, the statement must include the taxpayer's name, address, taxpayer identification number, and the type and amount of qualified expenditures identified in § 59(e)(2) that the taxpayer elects to deduct ratably over the applicable period described in § 59(e)(1).

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 §§ 301.9100-1 through 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 301.9100-1, 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 allows automatic extensions of time for making certain elections. Section 301.9100-3 allows extensions of time for making elections that do not meet the requirements of § 301.9100-2.

The Commissioner will grant requests for relief under § 301.9100-3 when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) 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)(1) provides, in part, that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief under § 301.9100-3 before the failure to make the regulatory election is discovered by the Internal Revenue Service or 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.

Section 301.9100-3(b)(3) provides, in part, that a taxpayer is deemed to have not acted reasonably or in good faith if the taxpayer seeks to alter a return position for

which an accuracy-related penalty has been or could be imposed under § 6662 at the time the taxpayer requests relief (taking into account any qualified amended return filed within the meaning of § 1.6664-2(c)(3) of this chapter) and the new position requires or permits a regulatory election for which relief is requested; the taxpayer was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or the taxpayer uses hindsight in requesting relief.

Section 301.9100-3(c)(1)(i) provides, in part, that the Government's interests are considered prejudiced if 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). Additionally, § 301.9100-3(c)(1)(ii) provides, in part, that the Government's interests ordinarily are prejudiced 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 § 301.9100-3.

CONCLUSION

Based solely on the facts and representations submitted, we conclude that the requirements of §§ 301.9100-1 through 301.9100-3 have been satisfied. Accordingly, the Commissioner grants Taxpayer an extension of time of 60 calendar days from the date of this letter to make the elections under § 59(e) and § 1.59-1(b) to deduct ratably over a 60-month period its IDC described in § 263(c) for its taxable years ended Date A, Date B, Date C, Date D, and Date E. The § 59(e) elections must comply with the manner-of-election requirements of § 1.59-1(b)(1). This extension of time allows Taxpayer to make the elections as required by § 1.59-1(b)(1); it does not permit recalculation of those amounts unless otherwise permitted by applicable statutes of limitation.

In making the elections, Taxpayer must attach a copy of this letter ruling to its amended consolidated federal income tax returns. We have enclosed copies (one for each election) for that purpose. Alternatively, if Taxpayer files its amended consolidated federal income tax returns electronically, it may satisfy this requirement by attaching a statement to its amended returns that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and Taxpayer's representatives and accompanied by a penalties 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 a ruling, it is subject to verification on examination.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the facts described above under any other provisions of the Code and the regulations thereunder. Specifically, we express or imply no opinion on whether Taxpayer satisfies the requirements of § 263(c) or § 59(e).

This letter ruling is directed only to the taxpayer requesting 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, we are sending a copy of this letter to Taxpayer's authorized representatives. We also are sending a copy of this letter to the appropriate Director, LB&I.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By:

Patrick S. Kirwan
Chief, Branch 6
Office of Associate Chief Counsel
Passthroughs & Special Industries

Enclosures (2):
Copies of this letter
Copy for § 6110 purposes

cc: