Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

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PLR-106675-22

Date:
November 16, 2022

LEGEND

P =

S1 =

S2 =

S3 =

a =

Tax Year =

Dear :

This letter responds to a letter dated April 1, 2022, and subsequent correspondence, submitted by P on behalf of S1, S2 and S3 requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make elections under § 59(e) of the Internal Revenue Code (Code) and § 1.59-1(b)(1) of the Income Tax Regulations to deduct ratably over a 10-year period S1, S2 and S3's research and experimental (R&E) expenditures described in § 174(a) incurred in Tax Year. This letter is being issued electronically in accordance with Rev. Proc. 2020-29, 2020-21 I.R.B. 859. A paper copy will not be mailed to P.

FACTS

P is the common parent of an affiliated group of corporations, including S1, S2 and S3, that files a consolidated federal income tax return on a calendar year basis using the accrual method of accounting (hereinafter P, S1, S2 and S3 will be collectively referred to as Taxpayer).

Taxpayer represents that it, through its tax advisors, consistently explored and discussed the possibility of making elections under § 59(e) and § 1.59-1(b)(1). However, Taxpayer was misinformed regarding knowable, material facts at the time Taxpayer's tax advisors prepared and filed its tax return for Tax Year. Taxpayer represents that if had been fully informed regarding these material facts, it would have made the § 59(e) elections totaling approximately $a with its timely filed return for Tax Year. Taxpayer further represents that no facts have changed since it filed its tax return for Tax Year that make the § 59(e) elections more advantageous to Taxpayer.

Taxpayer represents that, in requesting an extension of time to make the § 59(e) elections for Tax Year, it has acted reasonably and in good faith and, further, there is no prejudice to the interests of the government.

RULING REQUESTED

Taxpayer requests an extension of time under §§ 301.9100-1 and 301.9100-3 to make elections under § 59(e) to capitalize and amortize Taxpayer's R&E expenditures incurred during Tax Year.

LAW AND ANALYSIS

Section 59(e)(1) allows a taxpayer, in general, to deduct ratably over the 10-year period any qualified expenditure to which an election under § 59(e) applies, beginning with the taxable year in which such expenditure was made.

Section 59(e)(2)(B) includes in the definition of "qualified expenditure" any amount which, but for an election under § 59(e), would have been allowable as a deduction for the taxable year in which paid or incurred under § 174(a) (relating to R&E expenditures).

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

Section 59(e)(4)(A) provides that an election under § 59(e)(1) may be made with respect to any portion of any qualified expenditure.

Section 59(e)(4)(B) provides that an election made under § 59(e) may be

revoked only with the consent of the Secretary.

Section 1.59-1(b)(1) provides that 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 statement must be filed 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, and 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).

Section 1.59-1(b)(2) provides, in part, that a taxpayer may make an election under § 59(e) with respect to any portion of any qualified expenditure paid or incurred by the taxpayer in the taxable year to which the election applies. An election under § 59(e) must be for a specific dollar amount and the amount subject to an election under § 59(e) may not be made by reference to a formula.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time 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" includes an election the due date of which is prescribed by a regulation published in the Federal Register.

Sections 301.9100-1 through 301.9100-3 provide the standards used 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 rules for requesting extensions of time for regulatory 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).

CONCLUSION

Based solely on the information submitted and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, the Commissioner grants Taxpayer an extension of time of 120 days from the date of this letter to make the elections under § 59(e) and § 1.59-1(b)(1) to deduct ratably over a 10-year period its R&E expenditures incurred for Tax Year. The § 59(e) elections must comply with the manner-of-election requirements of § 1.59-1(b)(1).

In making the elections for Tax Year, Taxpayer must attach a copy of this letter ruling to its amended consolidated federal income tax return. Alternatively, if Taxpayer files its amended consolidated federal income tax return electronically, it may satisfy this requirement by attaching a statement to its amended return that provides the date and control number of the letter ruling.

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 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 provision of the Code and the regulations thereunder. Specifically, we express or imply no opinion concerning whether Taxpayer satisfies the requirements of §§ 59(e) or 174(a).

This ruling is directed only to the taxpayer who requested 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,

Associate Chief Counsel
(Passthroughs and Special Industries)

Jennifer A. Records

By: _____
Jennifer A. Records
Senior Technician Reviewer, Branch 6
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
Copy for § 6110 Purposes

cc: