

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202511004**

Release Date: 3/14/2025

Index Number: 9100.00-00, 48.01-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B06
PLR-110829-24

Date:
December 18, 2024

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 § 48(a)(5) of the Internal Revenue Code

Taxpayer =
Parent 1 =
Parent 2 =
Holding Company =
Plant =
Unit 1 =
Unit 2 =
Tax Year A =
Tax Year B =
Date 1 =
Date 2 =
Date 3 =
Date 4 =

Dear

This is in response to a letter dated May 24, 2024, submitted on behalf of Taxpayer requesting extensions of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make a late election under § 48(a)(5) of the Internal Revenue Code (Code) to claim the investment tax credit determined under § 48 in lieu of the production tax credit under § 45 with respect to certain renewable energy facilities for Tax Year A.

FACTS

Taxpayer represents that the facts are as follows.

Taxpayer is a limited liability company that is treated as a partnership for federal income tax purposes. Taxpayer's parent companies, Parent 1 and Parent 2, each own a fifty-percent interest. Parent 1 is Taxpayer's managing member and is a disregarded entity that is wholly owned by Holding Company. Taxpayer was created to facilitate an investment in Plant.

Taxpayer increased Plant's capacity by upgrading two units used for electricity generation, Unit 1 and Unit 2. Taxpayer shutdown Unit 2 on Date 1 and placed it back in service on Date 2, in Tax Year A. Taxpayer shutdown Unit 1 on Date 3 and placed it back in service on Date 4. Taxpayer's internal accounting team treated the upgrades to Unit 1 and Unit 2 as a single project. Accordingly, Taxpayer's financial records did not reflect that Unit 2 was in service when Taxpayer prepared its tax return for Tax Year A. As such, Taxpayer did not make a timely election under § 48(a)(5). After consulting with its tax advisor, Taxpayer discovered it should have treated Unit 2 as placed in Tax Year A.

Taxpayer represents that, in requesting an extension of time to make the § 48(a)(5) election for Tax Year A for Unit 2, it has acted reasonably and in good faith and, further, there is no prejudice to the interests of the government.

LAW AND ANALYSIS

Section 48(a)(5) provides, in part, that a taxpayer may irrevocably elect to claim the investment tax credit determined under § 48 in lieu of the production tax credit under § 45 with respect to certain renewable facilities.

Section 48(a)(5)(A) provides that qualified property that is part of a qualified investment credit facility shall be treated as energy property for purposes of § 48, and that the energy percentage with respect to such property shall be 6 percent. Section 48(a)(5)(B) provides that no credit shall be allowed under § 45 for any taxable year with respect to any qualified investment credit facility. Section 48(a)(5)(C) provides that taxpayers may elect to treat a qualified facility, as defined under § 45(d), as a qualified investment credit facility if it was placed in service after 2008 and the construction of the facility began before January 1, 2025, and if no credit under § 45 has been allowed.

Notice 2009-52, 2009-25 I.R.B. 1094, provides, in part, that an election to treat a qualified facility as a qualified investment credit facility and claim the investment tax credit determined under § 48 in lieu of the production tax credit under § 45 will be effective if it is made in the manner and time set forth in the notice.

Section 2.01 of Notice 2009-52 provides, in part, that to make the election with respect to a qualified facility, a taxpayer must claim the energy credit with respect to qualified property that is an integral part of the facility on a completed Form 3468 and file such form with the taxpayer's income tax return for the year in which the property is placed in service.

Section 2.03 of Notice 2009-52 provides that the election to claim the investment tax credit determined under § 48 in lieu of the production tax credit under § 45 must be made on a timely filed return (including extensions) for the taxable year in which the facility that is to be treated as a qualified investment credit facility is placed in service.

Section 301.9100-1(a) provides that the regulations under this section and §§ 301.9100-2 and 301.9100-3 establish the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. An extension of time is available for elections that a taxpayer is otherwise eligible to make. However, the granting of an extension of time is not a determination that the taxpayer is otherwise eligible to make the election.

Section 301.9100-1(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 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 whose due date is prescribed by a notice published in the Internal Revenue Bulletin.

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).

The § 48(a)(5) election is a regulatory election within the meaning of § 301.9100-1(b) because the due date for making the election is set forth in Notice 2009-52. The § 48(a)(5) election is not expressly excepted from 9100 Relief, and there is no alternative late election relief procedure provided by a statute, regulation, or other published guidance.

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, Taxpayer is granted an extension of time of 120 days from the date of this letter to make an election under § 48(a)(5) for Year A to elect to claim the investment tax credit determined under § 48 in lieu of the production tax credit under § 45 with respect to its renewable facilities. The election under § 48(a)(5) must comply with all the requirements of Notice 2009-52.

In making the elections, Taxpayer should attach a copy of this letter to the amended returns for Year A. 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.

This letter ruling does not grant an extension of time for filing Taxpayer's federal income tax return for Tax Year A.

The ruling contained in this letter is 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 ruling request, it is subject to verification on examination. Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code and the regulations thereunder. We further express or imply no opinion on whether Taxpayer satisfies the requirements of § 48(a)(5), or other applicable portions of § 45 or § 48 and whether the credit amount claimed is correct.

This letter ruling is directed only to Taxpayer, who is 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, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

John M. Deininger

By:

John M. Deininger
Assistant to the Branch Chief, Branch 6
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure
Copy for § 6110 purposes

cc: