Office of Chief Counsel
Internal Revenue Service
Memorandum

Number: **200908014**
Release Date: 2/20/2009

CC:PSI:B06:
PLR-131976-07

UILC: 59.00-00, 174.00-00, 6501.00-00, 6511.00-00

date: October 31, 2007

to: Director, Communications, Technology & Media
Internal Revenue Service
1301 Clay Street 1680S
Oakland, CA 94612
Atten: Patricia Chaback

Special Counsel (CC:LM)
Large & Mid-Size Business
Internal Revenue Service
801 9th St, NW, Mint Building
Rm. 4-157
Washington, D.C. 20020
Atten: Lisa J. Shuman

from: Joseph H. Makurath
Senior Technician Reviewer
P&SI

subject: WITHDRAWAL OF REQUEST FOR A PRIVATE LETTER RULING CONCERNING SECTION 59(e)

In accordance with § 8.07(2)(a) of Rev. Proc. 2007-1 C.B. 1, this Chief Counsel Advice advises you that a taxpayer within your jurisdiction has withdrawn a request for a private letter ruling concerning § 59(e). Pursuant to § 6110(k)(3), this Chief Counsel Advice is not to be cited as precedent.

LEGEND

A =

B =

C =

State D

ISSUES

Whether the taxpayer may currently make a § 59(e) election via an amendment of its C tax returns (that are closed years) in order to amortize some or all of its section 174(a) expenses over 10 years.

CONCLUSIONS

No.

FACTS

This memorandum advises you that A withdrew its request for a private letter ruling after this office notified it of its adverse position.

A, a State D corporation, is the common parent of a consolidated group. With the exception of B, A has incurred net operating losses each taxable year through December 31, 2005. Until recently, A has treated its research and experimentation ("R&E") expenses as current deductions under section 174(a). However, A requested a ruling that it could currently make an election under section 59(e) via an amendment of its C tax returns (that are closed years) in order to amortize some or all of its section 174(a) expenses over 10 years.

LAW AND ANALYSIS

SECTION 59(e)

In general, section 59(e) allows any qualified expenditure to which an election under section 59(e) applies to be deducted ratably over a ten-year period beginning with the taxable year in which the expenditure was made. In support of its position, A relies on the preamble to the proposed section 59(e) regulations that states, with respect to an otherwise valid section 59(e) election filed for a taxable year ending prior to the effective date of the final regulations, such election would not be challenged by the IRS merely because the election was made later than the date prescribed by law for a 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 section 59(e) elections begins.

SECTIONS 6501 AND 6511

A's vehicle for effectuating its election is through the amendment of its C tax returns, notwithstanding that those years have been closed by the statutes of limitations. A has asserted that these statutes of limitations (section 6501 and 6511) only have application with respect to the assessment of tax and the claim for credit or refund of an overpayment of tax for which a return was required to be filed and that A's proposed section 59(e) election will result in neither an assessment, nor a credit or refund.

In support of its contention, A cites the following: Rev. Rul. 74-61, 1974-1 C.B. 239, Rev. Rul. 82-49, 1982-1 C.B. 5, Rev. Rul. 56-285, 1956-1 C.B. 134, Rev. Rul. 81-88, 1981-1 C.B. 85 and *Springfield Railway Co. v. U.S.,* 312 F.2d 754 (Ct. Cl.) 1963. In summary, the authority merely stands for the proposition that the Service in not precluded from making adjustments to arrive at the correct taxable income in closed years in order to properly determine a taxpayer's liability for open years (and thus no corrections for taxable income in closed years). A's only apparent motive for such an election is to avail itself of a tax planning opportunity with the benefit of hindsight.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call Phil Tiegerman at (202) 927-9524 if you have any further questions.