Internal Revenue Service

Number: **201126021**
Release Date: 7/1/2011

Index Number: 59.05-08, 9100.02-03

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:06
PLR-148896-10
Date:
March 29, 2011

LEGEND:

Taxpayer	=
Subsidiary	=
Date 1	=
Date 2	=
Date 3	=
State 1	=
State 2	=
Year 1	=
Year 2	=
Decade	=
Country	=
$$	=

Dear :

This letter responds to a letter dated , from Taxpayer's representative requesting permission, pursuant to § 301.9100-3 of the Procedure and Administration Regulations for an extension of time to make an election under § 59(e) of the Internal Revenue Code (Code) and § 1.59-1(b)(1) of the Income Tax Regulations to capitalize and deduct ratably certain research and experimentation (R&E) expenditures incurred by Subsidiary during Year 1. Taxpayer requests permission on behalf of its wholly owned Subsidiary with which Taxpayer files a consolidated federal income tax return.

According to the information submitted, Taxpayer is a public company organized in State 1 and headquartered in State 2.

. Taxpayer has been in operation since the Decade. On Date 1, Taxpayer purchased Subsidiary, an entity organized in Country. Subsidiary was acquired to allow Taxpayer to remain competitive in the market by obtaining engineering talent required to design, develop, test, and manufacture its products. Subsidiary incurred R&E expenditures in Year 1.

Taxpayer filed its tax return for the Year 1 tax year electronically. Taxpayer prepared an election under § 59(e) on behalf of Subsidiary to capitalize $$ of R&E expenses under § 174 incurred in Year 1 and deduct such expenses over ten years in accordance with § 59(e). Prior to filing the Year 1 tax return, the Taxpayer's Tax Compliance Director reviewed a paper copy of the return, which included the § 59(e) election. When the return was converted into an XML file to submit electronically, the § 59(e) election was inadvertently not included. Taxpayer calculated its Year 1 tax return as if the § 59(e) election was made. On Date 2, while filing its Year 2 tax return, Taxpayer discovered that the election had been inadvertently not included in the Year 1 return. On Date 3, Taxpayer filed an amended return for the Year 1 tax year and made an invalid § 59(e) election. Taxpayer then sought this extension of time to file the § 59(e) election under § 301.9100-3.

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 election than Taxpayer would have had if the election had been timely made (taking into account the time value of money). Taxpayer represents that it acted in good faith and that granting relief will not result in prejudice to the interests of the Government.

Law and Analysis

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 § 174(a) (relating to research and experimental expenditures).

Section 59(e)(1) allows the taxpayer to deduct research and experimental expenditures ratably over the 10 year period beginning with the taxable year in which such expenditure was made.

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.

Treas. Reg. § 1.59-1(b)(1) prescribes the time and manner of making the § 59(e)(1) election. 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.

Section 174(a) provides that a taxpayer may treat research or experimental expenditures that are paid or incurred during the taxable year in connection with its trade or business as expenses that are not chargeable to a capital account.

Under § 301.9100-1(c) of the Procedure and Administration Regulations, the Commissioner in exercising the Commissioner's discretion 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.

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 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) 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, and the taxpayer failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election, failed to make the election because of intervening events beyond the taxpayer’s control, or reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the taxpayer failed to make, or advise the taxpayer to make the election. Section 301.9100-3(c) provides, in part, that the Government's interest is considered prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate of 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).

Based solely on the information submitted and the representations made, 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 120 days from the date of this letter to make the election under § 59(e) for Year 1 with the appropriate service center. Taxpayer should submit a copy of this ruling with a copy of the amended return filed for Year 1. We have enclosed 2 copies for that purpose.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and Taxpayer's representative and accompanied by a penalty of perjury statements executed by the appropriate parties. 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. 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 no opinion concerning whether Taxpayer satisfies the requirements of § 174(a) or § 59(e).

This letter ruling is directed only to the taxpayer who requested it. Under § 6110(k)(3), a letter ruling 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 ruling letter to your authorized representative. We also are sending a copy of this letter to the appropriate Industry Director, LB&I.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: _____
Jaime C. Park
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures:
2 copies of this letter
copy for section 6110 purposes

cc: