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Date: January 24, 2012

LEGEND

Taxpayer	=
State	=
X	=
Y	=
A	=
a%	=
b%	=
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Date	=
Unit 1	=
Unit 2	=
Unit 3	=
Unit 4	=
Unit 5	=
Unit 6	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Year 6	=
Year 7	=
Year 8	=
Year 9	=
Year 10	=

Year 11 =
Year 12 =
Month =

Dear :

This responds to a letter dated November 8, 2011, from Taxpayer's representative requesting permission, under §§ 301.9100-1 and 301.9100-3 of the Federal Income Tax Regulations (Regulations) for a 60-day extension of time to make an election under § 169 of the Internal Revenue Code (Code) and § 1.169-4(a)(1), for the certified pollution control facilities that are the subject of this ruling request.

Taxpayer represents that the facts are as follows:

Taxpayer is both incorporated and headquartered in State. Taxpayer is a vertically integrated regulated electric company serving retail customers in portions of several states. Taxpayer also sells electricity in the wholesale market.

Taxpayer is part of an affiliated group of corporations that files a consolidated U.S. corporation income tax return. X is the parent of this affiliated group. X owns a% of Y, and Y indirectly owns b% of the common stock of Taxpayer. Y acquired Taxpayer Date. X (and, therefore, Taxpayer) employs a calendar year reporting period. Taxpayer uses the accrual method of accounting.

Over the course of taxable years, Year 1, Year 2, Year 3, and Year 4, Taxpayer placed in service, at c coal fired electrical plants owned by Taxpayer, d atmospheric pollution control facilities that qualified for amortization under § 169 of the Code, provided that all requirements of § 169 were met. Taxpayer provided the following information about these pollution control facilities:

- Taxpayer placed in service the pollution control facility installed in connection with Unit 1 in Year 1. Unit 1 began operation in Year 5. Taxpayer claimed 60-month amortization on this pollution control facility on its tax return beginning in Year 2.

- Taxpayer placed in service the pollution control facility installed in connection with Unit 2 in Year 2. Unit 2 began operation in Year 6. Taxpayer claimed 84-month amortization on this pollution control facility on its tax return beginning in Year 2.

- Taxpayer placed in service the pollution control facility installed in connection with Unit 3 in Year 2. Unit 3 began operation in Year 7. Taxpayer claimed 84-month amortization on this pollution control facility on its tax return beginning in Year 2.

- Taxpayer placed in service the pollution control facility installed in connection with Unit 4 in Year 3. Unit 4 began operation in Year 8. Taxpayer claimed 84-month amortization on this pollution control facility on its tax return beginning in Year 3.

- Taxpayer placed in service the pollution control facility installed in connection with Unit 5 in Year 3. Unit 5 began operation in Year 9. Taxpayer represents that it intended to claim 84-month amortization on this pollution control facility, and it intended to begin amortizing the facility on its tax return in Year 4. Taxpayer represents that Taxpayer inadvertently did not classify the pollution control facility installed in connection with Unit 5 as a certified pollution control facility in Year 4.

- Taxpayer placed in service the pollution control facility installed in connection with Unit 6 in Year 4. Unit 6 began operation in Year 10. Taxpayer claimed 60-month amortization on this pollution control facility on its tax return beginning in Year 4.

One of the requirements under § 169 of the Code is that Taxpayer must timely file an election for each facility with its federal income tax return as described by § 1.169-4 of the Regulations. Section 1.169-4 requires a taxpayer to attach the required election statement and application and/or certification with the respective timely filed federal income tax return.

As a result of a review of Taxpayer's pollution control facilities conducted in Month of Year 11, Taxpayer determined that Taxpayer had not timely filed with Taxpayer's federal income tax returns for taxable years, Year 2, Year 3, and Year 4, elections as required under § 1.169-4 of the Regulations for the certified pollution control facilities. Therefore, Taxpayer did not file an election with X's consolidated federal income tax return for taxable years, Year 2, Year 3, and Year 4.

Taxpayer explained that Taxpayer inadvertently omitted the required regulatory election for several reasons.

First, Taxpayer last claimed amortization under § 169 of the Code for a 60-month period beginning in Year 12. Taxpayer's tax department did not employ any tax personnel during the Year 2, Year 3, or Year 4 tax years that were associated with the § 169 election in Year 12.

Second, Taxpayer has an extremely complex return. Taxpayer is a company that has in excess of $g revenue and h of fixed asset additions per taxable year. Additionally, Taxpayer has a large number of differences between book income and federal taxable income. The differences are primarily due to regulators, including the

public utility commissions that regulate Taxpayer's retail operations, which regularly include costs in a period other than the period in which an unregulated utility would charge the costs to expense.

Finally, Taxpayer personnel including A, incorrectly assumed that Taxpayer made the required election under § 169 of the Code by claiming the § 169 amortization on the tax return as filed, and that Taxpayer did not need any additional form of election. Beginning with the Year 2 federal income tax return, Taxpayer has calculated and claimed § 169 amortization on its tax returns for the applicable tax years and applicable facilities except the pollution control facility installed in connection with Unit 5. Additionally, Taxpayer has received the required state certifications for all of the pollution control facilities, and Taxpayer has received e required federal certification(s), with f certification(s) currently pending.

In summary, Taxpayer represents that Taxpayer employs highly qualified tax professionals and prepares its returns with due diligence and prudence; however, in this instance, Taxpayer personnel were unaware of the written regulatory election required by § 1.169-4 of the Regulations. Taxpayer also represents that Taxpayer intended and has always intended to make the election under § 169 of the Code. Taxpayer represents that granting the relief requested will not prejudice the interests of the Government. Taxpayer represents that granting the relief will result in Taxpayer having the same amount of deductions in the aggregate for all taxable years affected by the election if Taxpayer had timely made the election. Furthermore, the tax consequences of more than one taxpayer are not affected and will not result in a lower tax liability in the aggregate if relief is granted. Additionally, the taxable years in which the regulatory elections should have been made or any taxable years that would have been affected by the elections had they been timely filed are not closed by the period of limitations on assessments under § 6501(a) of the Code before the granting of relief.

Law and Analysis

Section 169(a) of the Code allows a taxpayer to elect to take a deduction for the amortization of the amortizable basis of any certified pollution control facility (as defined in § 169(d)), based on a period of 60 months. The 60-month period shall begin, as to any pollution control facility, at the election of the taxpayer, with the month following the month in which such facility was completed or acquired, or with the succeeding taxable year.

Under § 169(b) of the Code, the taxpayer makes the election to take the amortization deduction and to begin the 60-month period with the month following the month in which the facility is completed or acquired, or with the taxable year succeeding the taxable year in which such facility is completed or acquired, by filing with the Secretary, in such manner, in such form, and within such time, as the Secretary may by regulations prescribe, a statement of such election.

Section 169(d)(1) of the Code defines a certified pollution control facility as a new identifiable treatment facility which is used, in connection with a plant or other property in operation before January 1, 1976, to abate or control water or atmospheric pollution or contamination by removing, altering, disposing, storing, or preventing the creation or emission of pollutants, contaminants, wastes, or heat.

Additionally, under § 169(d)(1)(A) of the Code, the State certifying authority having jurisdiction with respect to such facility has certified the facility to the Federal certifying authority as having been constructed, reconstructed, erected, or acquired in conformity with the State program or requirements for abatement or control of water or atmospheric pollution or contamination.

Similarly, under § 169(d)(1)(B) of the Code, the Federal certifying authority has certified the facility to the Secretary as being in compliance with the applicable regulations of Federal agencies and as being in furtherance of the general policy of the United States for cooperation with the States in the prevention and abatement of water pollution under the Federal Water Pollution Control Act, as amended (33 U.S.C. 466 et seq.), or in the prevention and abatement of atmospheric pollution and contamination under the Clean Air Act, as amended (42 U.S.C. 1857 et seq.).

Finally, under § 169(d)(1)(C) of the Code, the facility does not significantly increase the output or capacity, extend the useful life, or reduce the total operating costs of such plant or other property (or any unit therof), or significantly alter the nature of the manufacturing or production process or facility.

Under § 169(d)(4)(A) of the Code, for purposes of § 169(d)(1), a new identifiable treatment facility includes only tangible property (not including a building and its structural components, other than a building which is exclusively a treatment facility) which is of a character subject to the allowance for depreciation provided in § 167, which is identifiable as a treatment facility. Additionally, the taxpayer must complete the construction, reconstruction, or erection of this property after December 31, 1968, or taxpayer must acquire this property after December 31, 1968, if the original use of the property commences with the taxpayer and commences after such date. In applying this section in the case of property the taxpayer constructs, reconstructs, or erects after December 31, 1968, there shall be taken into account only that portion of the basis properly attributable to construction, reconstruction, or erection after December 31, 1968.

Under § 169(d)(4)(B) of the Code, in the case of any facility described in § 169(d)(1) solely by reason of § 169(d)(5), § 169(d)(4)(A) shall be applied by substituting “April 11, 2005” for December 31, 1968” each place it appears therein.

Under § 169(d)(5)(A) of the Code, in the case of any atmospheric pollution control facility which is placed in service after April 11, 2005, and used in connection with an electric generation plant or other property which is primarily coal fired, § 169(d)(1) shall be applied without regard to the phrase "in operation before January 1, 1976."

Under § 169(d)(5)(B) of the Code, in the case of a facility placed in service in connection with a plant or other property placed in operation after December 31, 1975, this section shall be applied by substituting "84" for "60" each place it appears in § 169(a) and § 169(b).

Under § 1.169-4(a)(1) of the Regulations, a taxpayer making the election under § 169(b) shall make the election by attaching a statement of such election to its return for the taxable year in which falls the first month of the 60-month amortization so elected. Such statement must include the information specified in § 1.169-4(a)(1)(i) through (ix).

Under § 301.9100-1(c) of the Regulations, 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 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 of the Regulations 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 of the Regulations when the taxpayer provides 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(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. 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 of the Regulations have been satisfied. Accordingly, the Commissioner grants Taxpayer an extension of time of 60 days from the date of this letter to make the election under § 169 of the Code for the certified pollution control facilities subject to Taxpayer's letter ruling request. Taxpayer must file the elections with the amended federal income tax returns with the appropriate service center for the taxable years in which fall the first month of the 60-month or 84-month amortization period elected by Taxpayer. The elections must comply with the requirements of § 1.169-4(a)(1), including the information required by § 1.169-4(a)(1)(i) through (ix). Taxpayer should attach a copy of this letter to the tax returns.

If the period of limitations on assessment for the taxable years in which the elections should have been made or for any taxable year that would have been affected by the elections had they been timely made will expire before Taxpayer has filed the certifications from the EPA with the appropriate Service official in the operating division that has examination jurisdiction over Taxpayer's federal tax returns, Taxpayer must consent under section 6501(a) to an extension of the period of limitations on assessment for such taxable years.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer 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 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 the facilities are certified pollution control facilities as defined in § 169(d) of the Code or whether the facilities qualify for 60 or 84 month amortization periods.

This letter ruling is directed only to the taxpayer who requested it. Under § 6110(k)(3) of the Code, 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 representatives.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By: _____
Peter C. Friedman
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
Passthroughs & Special Industries

Enclosures (4):
Copies (3)
Copy for § 6110 purposes