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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:5
PLR-139825-12
Date:
February 26, 2013

Legend:

Taxpayer =

year a =year b =year c =year d =

date a =

date b =a =b =

C =

d =e =

Tax Director =

Dear _____ :

This letter responds to a letter dated September 14, 2012, submitted on behalf of Taxpayer by its authorized representative, requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to file Forms 8900, Qualified Railroad Track Maintenance Credit, for its year a through year d tax years.

Taxpayer, the common parent of an affiliated group, is engaged in the rail and related transportation business. Taxpayer's subsidiaries include a railroads classified as Class I railroads by the Surface Transportation Board (STB) and b to c railroads (depending on the year) classified as Class II or Class III railroads. For purposes of filing Form R-1, Railroad Annual Report, the STB requires consolidated reporting for each group of railroads that operate as a single, integrated United States rail system whose cumulative operating revenues meet the Class I threshold. In compliance with this STB requirement, Taxpayer filed its Form R-1 for its year a through year d tax years as if all of its subsidiary railroads consisted of a single consolidated Class I railroad.

In year a and year b, b members of Taxpayer's consolidated group were eligible to claim the railroad track maintenance credit. In year c and year d, c members of the consolidated group were eligible to claim the credit. These members satisfied the STB's definition of a Class II or Class III railroad and incurred qualified railroad track maintenance expenditures during those years. The amount of the railroad track maintenance credit for these years is \$d for year a and year b and \$e for year c and year d.

In date a, Taxpayer's Tax Director learned that the STB's requirement for integrated railroads to file as a consolidated Class I railroad was for revenue measurement purposes only and did not otherwise affect the STB's classification designation of the individual railroads in the consolidated reporting group. In a date b letter from the STB, the STB confirmed that Taxpayer's consolidated reporting requirements for Form R-1 do not affect the classification designation of the individual railroads in Taxpayer's consolidated reporting group.

Taxpayer requests a ruling that it be granted an extension of time under § 301.9100-1 to file Forms 8900, Qualified Railroad Track Maintenance Credit, for its year a through year d tax years.

Under § 45G(a) of the Internal Revenue Code, the railroad track maintenance credit for the taxable year is equal to 50 percent of the qualified railroad track maintenance expenditures paid or incurred by an eligible taxpayer during the taxable year.

Under § 45G(c), the term "eligible taxpayer" means and Class II or Class III railroad, and any person who transports property using the rail facilities of a Class II or Class III railroad, or who furnishes railroad-related property or services to a Class II or

Class III railroad, but only with respect to miles of railroad track assigned to such person by the Class II or Class III railroad.

Section 1.45G-1(a) of the Income Tax Regulations requires that a taxpayer claiming the railroad track maintenance credit must do so by filing Form 8900 with its timely filed (including extensions) Federal income tax return for the taxable year the railroad track maintenance credit is claimed.

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" means an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

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 an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2. A request for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

In this case, Taxpayer made protective claims for refund for year a and year b relating to the railroad track maintenance credit. Based solely on the facts and the representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Taxpayer's Forms 8900 will be considered timely filed for year a through year d for purposes of § 1.45G-1(a) if they are filed no later than 120 days after the date of this letter. A copy of this letter should be sent to the appropriate service center with a request that it be attached to Taxpayer's amended tax returns for year a and year b and filed with Taxpayer's amended tax returns for year c and year d. A copy is enclosed for that purpose. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their returns that provides the date and control number of the letter ruling.

Except as specifically set forth above, we express no opinion concerning the federal income tax consequences of the facts described above under any other provisions of the Code. In particular, we express no opinion on whether Taxpayer's expenditures qualify for the railroad track maintenance credit.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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 rulings, it is subject to verification on examination.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative. Also, we are sending a copy of this letter to the appropriate LB&I official.

Sincerely,

Curt G. Wilson
Associate Chief Counsel
(Passthroughs and Special Industries)

By: _____
Paul F. Handleman
Branch Chief, Branch 5
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter
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