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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B06
PLR-138019-17

Date:
June 18, 2018

In Re:

LEGEND

Taxpayer =

Taxable Year =

a =

Dear :

This is in response to a letter dated December 14, 2017, 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 § 59(e) of the Internal Revenue Code (Code) for Taxable Year with respect to research and experimental expenditures under § 174(a) paid and incurred in that year.

According to the facts and information submitted, Taxpayer's internal tax accountant inadvertently failed to timely file Form 7004 and Form 1120 believing that the forms had already been filed electronically. Consequently, Taxpayer failed to timely make an election under § 59(e) to use the optional write-off of certain tax preferences to deduct ratably research and experimental expenditures in the amount of $a. At all times, it was Taxpayer's intention and belief that its Taxable Year Form 1120 and its regulatory elections were timely filed in accordance with a valid Form 7004 for Taxable Year.

Taxpayer has represented that, in requesting an extension of time to make a separate late election under § 59(e) for Taxable Year, it acted reasonably and in good faith and, further, there is no prejudice to the interest of the Government.

Section 174(a) provides, in general, that a taxpayer may treat research and experimental expenditures which are paid or incurred by him during the taxable year in connection with his trade or business as expenses which are not chargeable to capital account. The expenditures so treated are allowed as a deduction.

Section 59(e)(1) allows a taxpayer, in general, to deduct ratably over the 10-year period any qualified expenditure to which an election under § 59(e) applies, beginning with the taxable year in which such expenditure was made.

Section 59(e)(2)(B) includes in the definition of "qualified expenditure" any amount which, but for an election under § 59(e), would have been allowable as a deduction for the taxable year in which paid or incurred under § 174(a) (relating to research and experimental expenditures).

Section 59(e)(3) specifically prohibits the deduction of the qualified expenditures under any other section of the Code if the option under § 59(e) is elected.

Section 59(e)(4)(A) provides that an election under § 59(e)(1) may be made with respect to any portion of any qualified expenditure.

Section 59(e)(4)(B) provides that an election made under § 59(e) may be revoked only with the consent of the Secretary.

Section 1.59-1(b)(1) of the Income Tax Regulations prescribes the time and manner of making the election under § 59(e). 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 and include certain required information.

Section 1.59-1(b)(2) provides, in part, that a taxpayer may make an election under § 59(e) with respect to any portion of any qualified expenditure paid or incurred by the taxpayer in the taxable year to which the election applies. An election under § 59(e) must be for a specific dollar amount and the amount subject to an election under § 59(e) may not be made by reference to a formula.

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(b) provides that the term “regulatory election” includes an election whose due date is prescribed by a regulation published in the Federal Register.

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 301.9100-2 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.

Section 301.9100-3 provides that requests for relief subject to this section 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.

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 § 59(e) to deduct ratably over the 10-year period research and experimental expenditures paid and incurred for Taxable Year.

The election under § 59(e) must comply with the requirements of § 1.59-1(b). Section 1.59-1(b) requires, in part, that an election under § 59(e) 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 election under § 59(e) begins. The statement must include the taxpayer's name, address, and taxpayer identification number, and the type and amount of qualified expenditures identified in § 59(e)(2) that the taxpayer elects to deduct ratably over the applicable period described in § 59(e)(1).

In making the election, Taxpayer should also attach a copy of this letter to the amended returns for Taxable Year. We have enclosed a copy of this letter for that purpose.

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

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the facts described above. In particular, we express or imply no opinion on whether Taxpayer satisfies the requirements of § 59(e) and the regulations thereunder, or whether the expenditures at issue are research and experimental expenditures under § 174(a), or whether the amounts of the research and experimental expenditures at issue are correct.

This letter 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 rulings contained in this letter are based upon information submitted and representations made by Taxpayer and Taxpayer's representatives and accompanied by a penalty of perjury statement executed by an appropriate party. Although this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Peter C. Friedman
Peter C Friedman
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes