Internal Revenue Service

Number: **202511001**
Release Date: 3/14/2025

Index Number: 280C.03-00

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:B06
PLR-101407-24

Date:
December 12, 2024

In Re: Request to revoke a section 280C election

LEGEND:

Taxpayer =

Former Name =

State A =

State B =

Segment A =

Segment B =

Software =

Firm =

Year 1 =

Year 2 =

Month 1 =

Month 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This letter responds to a letter dated Date 1, and supplemental correspondence dated Date 2, submitted by Taxpayer through its authorized representatives requesting permission to revoke its election to reduce the research credit under § 280C(c) pursuant to § 301.9100-3 of the Procedure and Administration Regulations.

FACTS

Taxpayer originally was incorporated in State A as Former Name. Taxpayer's principal executive offices are located in State B. Taxpayer operates its business through two segments: Segment A and Segment B.

Taxpayer prepares its consolidated Federal income tax return (Form 1120) using Software to complete its annual return filing. Junior members of the tax department are responsible for preparing the return. Throughout the preparation of the consolidated return, more senior members of the tax department review inputs and offer oversight regarding the preparation of the consolidated return.

As a result of the number of changes to the Code brought about by the Tax Cuts and Jobs Act, Pub. L. 115-97, (TCJA), there was significant discussion throughout the Year 1 fiscal year about specific tax positions that would be taken by Taxpayer. In particular, the tax department discussed the TCJA changes involving research development costs, including changes to § 174 and their potential implications on §§ 41 and 280C, which were to take effect for taxable years beginning after December 31, 2021. In taxable years prior to the TCJA, Taxpayer consistently had made the § 280C(c) election on its return. However, based on considerations resulting from the changes to § 174, the decision was made not to make the election under § 280C(c) for the Year 1 taxable year.

The decision not to make the § 280C(c) election for the Year 1 taxable year was discussed in tax department meetings throughout Year 1, as part of the quarterly income tax provision review and into Year 2 as annual preparation of the consolidated

Federal Income tax return progressed. The decision not to make a § 280C(c) election also was referenced in tax department email correspondence reflecting how Taxpayer would take into account the numerous changes brought about by the TCJA.

Taxpayer's Year 1 financial statements reflect Taxpayer's decision not to make the § 280C(c) election for the Year 1 taxable year, as the financial statements were calculated and finalized assuming the election would not be made. Specifically, Taxpayer's Year 1 Form 10-Q, showing the first quarter consolidated financial results was consistent with this decision. Further, Firm, which Taxpayer outsourced to calculate its research credit, included both the gross amount of the research credit and the reduced amount of the credit on the bottom of its workpapers, with the gross credit highlighted and the reduced credit grayed out.

However, according to Taxpayer, when the Year 1 Federal income tax return was being prepared, there was confusion regarding the § 280C(c) election, and the election was inadvertently made. The election was made contrary to Taxpayer's explicit instruction and its intent not to make a § 280C(c) election. Taxpayer's consolidated Federal income tax return for Year 1 was filed in Month 1 of Year 2. The error was identified by Taxpayer on Date 3. Through unauthorized actions of junior tax department employees, Taxpayer reduced the amount of its research tax credit under § 41, which otherwise is available on its consolidated Federal income tax return for the Year 1 taxable year.

In Month 2 of Year 2, a junior tax department employee was hired by Taxpayer to assist with preparation of its federal income tax returns. In particular, the employee was responsible for completing the Form 6765, Credit for Increasing Research Activities. Although the junior tax department employee had not been privy to earlier tax department discussions that no § 280C(c) election was planned, it was clear from the documentation used to prepare the return that no election was planned for the Year 1 taxable year. However, the employee inadvertently made the election, contrary to Taxpayer's instruction and its intent.

Additionally, on the Software organizer screen for inputting "Credit for Increasing Research", information had not been updated for the law change. The system required the Taxpayer preparer to check affirmatively or negatively if Taxpayer intended to make a § 280C election. If Taxpayer checked no, then the system reduced the § 174 deductions and increased taxable income. The system required an override to allow the preparer to not check the § 280C box and not reduce the §174 expenses.

A supervisor reviewed the junior tax department employee's return preparation work. When the research credit information came up for review, the supervisor observed that the Form 6765 noted that unless a reduced credit was taken, taxable income previously determined would be adjusted. Specifically, line 34 of Form 6765 provided the question, "Are you electing a reduced credit under Section 280C?" and it was pre-populated with the answer, "yes."

The supervisor was aware that taxable income previously had been finalized and should not be adjusted at this point. Additionally, on Date 4, the Director, Tax Planning walked the supervisor through the Firm workpapers and calculations. The Director, Tax Planning reiterated that the full credit should be taken and saved a version of the workpapers on Date 5 showing only the gross credit in the tax return files.

However, because the supervisor was confused by the IRS Form 6765, the supervisor consulted the IRS Instructions for the IRS Form 6765, rather than consulting with their supervisor, Senior Manager, Tax or Director, Tax Planning. The IRS Instructions on page four accompanying the form indicate that "[i]f you don't elect the reduced credit, you must reduce your otherwise allowable deduction for qualified research expenses or basic research expenses by the amount of the credit on this line." That is, the instructions provide that unless a reduced credit is claimed, taxable income will be revised. The IRS Instructions that the supervisor consulted had a revision date of 1/2023. Because the instructions were current and unambiguous, and because there had been no other changes to the form, the supervisor allowed the § 280C(c) election to be made, against the planned intentions of Taxpayer senior management.

RULING REQUESTED

Taxpayer requests that it be permitted to revoke its election to reduce the research credit under § 280C(c) pursuant to § 301.9100-3 of the Procedure and Administration Regulations.

LAW

Section 280C(c)(1) provides that for the credit for increasing research activities, in general, if the amount of the credit determined for the taxable year under § 41(a)(1) exceeds the amount allowable as a deduction for such taxable year for qualified research expenses or basic research expenses, the amount chargeable to capital account for the taxable year for such expenses shall be reduced by the amount of such excess.

Section 280C(c)(2) provides for an election of reduced credit. Pursuant to §280C(c)(2)(A), in general, in the case of any taxable year for which an election is made under § 280C(c)(2), § 280C(c)(1) shall not apply, and the amount of the credit under § 41(a) shall be the amount determined under § 280C(c)(2)(B).

Section 280C(c)(2)(B) provides that the amount of credit determined under § 280C(c)(2)(B) for any taxable year shall be the amount equal to the excess of the amount of credit determined under § 41(a) without regard to § 280C(c)(2), over the product of the amount described in § 280C(c)(2)(B)(i) (which is the amount of credit determined under § 41(a) without regard to § 280C(c)(2)), and the maximum rate of tax under §11(b).

Section 280C(c)(2)(C) provides that an election under § 280C(c)(2) for any taxable year shall be made not later than the time for filing the return of tax for such year (including extensions), shall be made on such return, and shall be made in such manner as the Secretary may prescribe. Such an election, once made, shall be irrevocable.

Sections 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election.

Section 301.9100-1(b) defines the term "statutory election" as including an election whose due date is prescribed by statute.

Under § 301.9100-1(c), in general, the Commissioner has discretion to 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 E, G, H, and I.

Section 301.9100-1(d) provides that extensions of time will not be granted for elections that are expressly excepted from relief or where alternative relief is provided by a statute, regulation, revenue ruling, revenue procedure, notice, or announcement.

Under § 301.9100-2(b), an automatic extension of 6 months from the due date of a return excluding extensions is granted to make statutory elections whose due dates are the due date of the return or the due date of the return including extensions provided the taxpayer timely filed its return for the year the election should have been made and the taxpayer tales corrective action as defined in § 301.9100-2(c) within that 6-month extension period.

Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. Requests for relief under § 301.9100-3(a) will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Rev. Rul. 83-74, 1953-1 C.B. 112, describes a situation wherein permission was granted to a homeowner's association to revoke a regulatory election under § 528 because of inadequate tax advice provided by its professional tax advisor. The holding of the revenue ruling was based on a situation that was analogous to those situations concerning taxpayers who have not made a particular election provided in the regulations because of inadequate or incorrect advice from either an attorney or accountant knowledgeable in tax matters and subsequently seek extensions of time under section 1.9100-1 of the regulations in which to make the election.

RULING

Section 301.9100-1(d)(2) provides that extensions of time will not be granted for elections that are expressly excepted from relief. Section 280C(c)(2)(C) expressly provides that the § 280C(c) election is irrevocable. Therefore, Taxpayer is not granted permission to revoke its election to reduce the tax credit under § 280C(c) pursuant to § 301.9100-3.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal income tax consequences of the above-described facts under any other provision of the Code or regulations. Specifically, this letter does not opine on the ability of a taxpayer to revoke a non-irrevocable election pursuant to the automatic procedures under § 301.9100-2(b).

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

The rulings contained in this letter are based upon information and representations submitted by the Taxpayer and Taxpayer's representatives 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 the power of attorney on file with this office, a copy of this letter is being sent to Taxpayer's authorized representative. We are also sending a copy of this letter ruling to LB&I ADCCI Compliance Planning and Analytics.

This letter is being issued electronically in accordance with Rev. Proc. 2020-29, 2020-21 I.R.B. 859. A paper copy will not be mailed to Taxpayer.

Sincerely,

/S/

David A. Selig
Senior Counsel, Branch 6
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure: Copy for § 6110 purposes

cc: