

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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June 05, 2012

In Re: Request for extension of time under §301.9100-3 of the Procedure and Administration Regulations to file an election pursuant to § 59(e) of the Internal Revenue Code

LEGEND:

Taxpayer =  
  
Year 1 =  
Year 2 =  
Year 3 =

Dear :

This responds to a letter dated February 10, 2012, and supplemental correspondence, from Taxpayer’s representative requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for Taxpayer to make an election under § 59(e) of the Internal Revenue Code and § 1.59-1(b)(1) of the Income Tax Regulations, to amortize certain research and experimental expenditures incurred in its taxable years, Year 1, Year 2, and Year 3.

According to the information submitted, Taxpayer did not timely make the election under § 59(e) for its taxable years Year 1, Year 2, and Year 3. Taxpayer has made representations explaining why the election under § 59(e) was not timely filed.

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 for the taxable year in which paid or incurred under § 174(a) (relating to research and experimental expenditures).

Section 59(e)(1) allows a taxpayer to deduct research and experimental expenditures ratably over the 10-year period beginning with the taxable year in which the expenditures were 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.

Section 1.59-1(b)(1) 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.

Under § 301.9100-1(c), 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 301.9100-1, 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)(1) 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; 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; or the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(b)(3) provides, in part, that a taxpayer is deemed to have not acted reasonably or in good faith if the taxpayer seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time the taxpayer requests relief (taking into account any qualified amended return filed within the meaning of § 1.6664-2(c)(3) of this chapter) and the new position requires or permits a regulatory election for which relief is requested; the taxpayer was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or the taxpayer uses hindsight in requesting relief.

Section 301.9100-3(c)(i) provides, in part, that the Government's interests are considered prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for 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). Additionally, § 301.9100-3(c)(ii) provides, in part, that the Government's interests ordinarily are prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under § 301.9100-3.

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 60 days from the date of this letter to make the election under § 59(e) for certain research and experimental expenditures on the tax returns for Year 1, Year 2, and Year 3 with the appropriate service center. The elections must comply with the requirements of § 1.59-1(b). Taxpayer should attach a copy of this letter to the tax returns. We have enclosed three copies for that purpose.

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 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 representatives.

Sincerely,

Associate Chief Counsel  
(Passthroughs and Special Industries)

By:

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Brenda M. Stewart  
Senior Counsel, Branch 6  
Office of Associate Chief Counsel  
Passthroughs & Special Industries

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

cc: