

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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PLR-100997-18

Date:

June 18, 2018

In Re:

### LEGEND

Taxpayer =

Taxable Year =

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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 § 48(a)(5) of the Internal Revenue Code (Code) to claim the investment tax credit determined under § 48 in lieu of the production tax credit under § 45 with respect to certain renewable energy facilities for Taxable 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 § 48(a)(5) to claim the investment tax credit, in the amount of a, in lieu of the production tax credit. At all times, it was Taxpayer's intention and belief that its Taxable Year Form 1120 and its election was 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 § 48(a)(5) for Taxable Year, it acted reasonably and in good faith and, further, there is no prejudice to the interest of the Government.

Section 48(a)(5) provides, in part, that a taxpayer may irrevocably elect to claim the investment tax credit determined under §48 in lieu of the production tax credit under § 45 with respect to certain renewable facilities.

Section 48(a)(5)(A) provides that qualified property that is part of a qualified investment credit facility shall be treated as energy property for purposes of § 48, and that the energy percentage with respect to such property shall be 30 percent. Section 48(a)(5)(C) provides that taxpayers may elect to treat qualified facilities (within the meaning of § 45) as qualified investment credit facilities. Section 48(a)(5)(B) provides that no credit shall be allowed under § 45 for any taxable year with respect to any qualified investment credit facility.

Notice 2009-52, 2009-25 I.R.B. (1094), provides, in part, that an election to treat a qualified facility as a qualified investment credit facility and claim the investment tax credit determined under § 48 in lieu of the production tax credit under § 45 will be effective if it is made in the manner and time set forth in the notice.

Section 2.01 of Notice 2009-52 provides, in part, that to make the election with respect to a qualified facility, a taxpayer must claim the energy credit with respect to qualified property that is an integral part of the facility on a completed Form 3468 and file such form with the taxpayer's income tax return for the year in which the property is placed in service.

Section 2.03 of Notice 2009-52 provides that the election to claim the investment tax credit determined under § 48 in lieu of the production tax credit under § 45 must be made on a timely filed return (including extensions) for the taxable year in which the facility that is to be treated as a qualified investment credit facility is placed in service.

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 notice published in the Internal Revenue Bulletin.

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.

The § 48(a)(5) election is a regulatory election within the meaning of Regulation § 301.9100-1(b), because the due date for making the election is set forth in Notice 2009-52. The § 48(a)(5) election is not expressly excepted from 9100 Relief, and there is no alternative late election relief procedure provided by a statute, regulation or other published guidance.

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 § 48(a)(5) for Taxable Year to elect to claim the investment tax credit determined under §48 in lieu of the production tax credit under § 45 with respect to its renewable facilities.

The election under § 48(a)(5) must comply with all of the requirements of Notice 2009-52.

In making the elections, Taxpayer should also attach copies of this letter to the amended returns for Taxable Year. We have enclosed copies 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 § 48(a)(5), or other applicable portions of §§ 48 and 45 and whether the credit amount claimed is 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

cc: