Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Date:
January 24, 2001

Legend:

Taxpayer =

X =

D1 =
D2 =
D3 =

SB/SE Official =

Dear :

This letter responds to a letter dated D1, and supplemental information, submitted on behalf of Taxpayer requesting an extension of time to make a retroactive election under section 1.197-1T(c) of the Temporary Income Tax Regulations.

Facts

Taxpayer represents that the facts are as follows:

Taxpayer acquired a franchise in D2, by paying $X as a franchise fee. Taxpayer did not make a retroactive election on their tax return for the taxable year ended D3 for their acquisition of the franchise.

Law and Analysis

Generally, if a taxpayer acquired, between July 25,1991 and August 10,1993, intangible property that otherwise met the definition of a section 197 intangible, then the taxpayer could make an election to treat all qualifying intangibles as subject to section 197 treatment. (See section 1.197-1T.)

Section 1.197-1T(c)(3) provides that the retroactive election must be made by the due date (including extensions of time) of the electing taxpayer's federal income tax return for the election year. If, however, the taxpayer's federal income tax return for the election year is filed before April 14, 1994, the election may be made by amending that return no later than September 12, 1994. Section 1.197-1T(b)(5) provides that the term "election year" means the taxable year that includes August 10, 1993. Taxpayer's election year was the taxable year ending D3. Taxpayer did not make a section 197 election for the taxable year ending D3 because their tax professional was unaware of the above-cited regulation.

Section 1.197-1T(c)(3)(ii) provides that the retroactive election is made by attaching the election statement described in section 1.197-1T(e) to the taxpayer's original or amended income tax return for the election year. Section 1.197-1T(c)(3)(iii) provides that an attempted election that does not satisfy the requirements of section 1.197-1T(c)(3) is not valid.

Section 1.197-1T(e)(1) provides that for an election under section 1.197-1T(c) to be valid, the electing taxpayer must file with its federal income tax return for the election year a written election statement, as an attachment to Form 4562 (Depreciation and Amortization), that satisfies the requirements of section 1.197-1T(e)(2). The electing taxpayer must also forward a copy of the election statement to the Statistics Branch (QAM:S:6111), IRS Ogden Service Center, ATTN: Chief, Statistics Branch, P.O. Box 9941, Ogden, UT 84409.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in sections 301.9100-2 and 301.9100-3 to make a regulatory election. Section 301.9100-1(b) defines a regulatory election as 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 301.9100-1 through 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 section 301.9100-2.

Requests for relief under section 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. Section 301.9100-3(a).

Conclusions

Based solely on the facts and representations made, the requirements of sections 301.9100-1 and 301.9100-3 have been met. Consequently, Taxpayer is granted an extension of time for making the retroactive election under section 1.197-1T(c), until 60 calendar days following the date of this letter. Taxpayer must file the election with their amended federal income tax return for the taxable year ended on D3 and must comply with all the requirements of sections 1.197-1T(c)(2)(ii), (c)(4) and (e). In addition, a copy of this letter along with a copy of the election should be sent to the SB/SE Official. A copy is enclosed for that purpose.

If any of Taxpayer's returns subject to the amended return requirement under section 1.197-1T(c)(4) are closed taxable years, the allowable amortization beginning with the first open taxable year in the recovery period is computed by dividing the basis of the property (adjusted by the greater of any depreciation or amortization deduction allowed or allowable in the closed year(s) had the election been made timely) by the number of months remaining in the recovery period as determined under section 197 and section 1.197-1T(b)(7).

Except as specifically ruled upon above, no opinion is expressed or implied concerning the federal income tax consequences of the transaction described above.

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

We are sending a copy of this letter to the SB/SE Official. In accordance with the power of attorney on file with this office, a copy of this letter is being sent to Taxpayer.

Sincerely yours,
PAUL F. KUGLER
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures: Copy of this letter
Copy of section 6110 purposes