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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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CC:PSI:B06
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Date:
March 27, 2018

LEGEND

Taxpayer: =

Taxable Year A: =

Taxable Year B: =

Dear :

This is in response to a letter dated October 4, 2017, requesting extensions of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make separate late elections under § 59(e) of the Internal Revenue Code (Code) for Taxable Year A and Taxable Year B, with respect to intangible drilling cost under § 263(c) paid and incurred in these years.

Taxpayer held an interest in two separate partnerships that were engaged in oil exploration and production. Taxpayer had an internal tax director who had consulted with an accounting firm. However, the accounting firm failed to inform Taxpayer that the section 59(e) election was available for the intangible drilling costs associated with the oil and gas activities of the partnerships described above.

Taxpayer represented that, in requesting extensions of time to make separate late elections under § 59(e) for Taxable Year A and Taxable Year B, it acted reasonably and in good faith and, further, there is no prejudice to the interests of the Government.

Section 263(c) of the Code authorizes the Secretary to prescribe regulations under which taxpayers may elect to deduct intangible drilling and development costs in the case of oil and gas wells located in the United States. Section 1.612-4(a) of the regulations provides that taxpayers that hold a working or operating interest in an oil or gas property may elect to deduct intangible drilling and development costs they incur with respect to that property.

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 § 263(c) (relating to intangible drilling and development costs in the case of oil and gas wells and geothermal wells).

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 301.9100-3 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 deduct intangible drilling costs ratably over the 10-year period described above.

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 elections, Taxpayer should also attach copies of this letter to the amended returns for Taxable Year A and Taxable Year B. We have enclosed copies of this letter (one for each election) for that purpose.

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 intangible drilling expenditures under § 263(c) or whether the amounts of those expenditures 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,

Patrick S. Kirwan
Chief, Branch 6
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes

cc: