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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

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Date:
March 22, 2022

LEGEND

P =

S =

a =

b =

c =

d =

Tax Year =

Natural Event =

Dear :

This letter responds to a letter dated October 1, 2021, and subsequent correspondence, submitted by P on behalf of S (hereinafter P and S are collectively referred to as Taxpayer), requesting permission to (1) revoke its existing elections under § 59(e) of the Internal Revenue Code, and (2) to make new and late elections under § 59(e) to deduct ratably over a specified period its intangible drilling and development

and mining exploration expenditures under §§ 263(c) and 617(a) (Expenditures) for its Tax Year.

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 P.

FACTS

Taxpayer represents that the facts are as follows:

P is the common parent of an affiliated group of corporations, including S, that files a consolidated federal income tax return on a calendar year basis using the accrual method of accounting.

At the time Taxpayer originally filed its income tax return for Tax Year, Taxpayer separately elected under § 59(e) and § 1.59-1(b)(1) of the Income Tax Regulations to deduct ratably over a 60-month period $a of § 263(c) intangible drilling and development expenditures and over a 10-year period $b of § 617(a) mining exploration expenditures. At the time of Taxpayer's original § 59(e) elections, these Expenditures represented all Expenditures Taxpayer had identified. Taxpayer historically made § 59(e) elections for all its Expenditures because it regularly has production tax credits that it uses to offset tax owed. Taxpayer makes § 59(e) elections so that it can maximize use of these credits.

For Tax Year, Taxpayer discovered that it failed to include $c of its intangible drilling expenditures and $d of its mining exploration expenditures in its timely filed § 59(e) elections. Taxpayer incurred the missed Expenditures as a direct result of an unforecastable, localized, and rare natural event (Natural Event) that severely damaged one of its facilities, rendering the facility inoperable. Taxpayer had never incurred Expenditures related to an event like the Natural Event and, as a result, its internal budgeting and tax accounting procedures were not equipped to identify that such Expenditures were eligible for § 59(e) elections. Prior to Tax Year, Taxpayer's procedures allowed it to appropriately identify Expenditures for inclusion in its § 59(e) elections. Taxpayer represents that, but for the Natural Event, Taxpayer would have captured all its Expenditures and included them in its § 59(e) elections to allow it to use available production tax credits.

Taxpayer wants to revoke its original § 59(e) elections so that it can make new § 59(e) elections for all its Expenditures for Tax Year. Taxpayer represents that, in requesting an extension of time to make new § 59(e) elections for Tax Year, it has acted reasonably and in good faith and, further, there is no prejudice to the interests of the government.

RULINGS REQUESTED

Taxpayer requests two rulings:

(1) Taxpayer requests consent to revoke its original § 59(e) elections to capitalize and amortize Expenditures for Tax Year; and

(2) if the Commissioner grants Taxpayer's first request, Taxpayer requests an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make new elections under § 59(e) to capitalize and amortize its Expenditures for Tax Year.

LAW

Section 59(e)(1) allows a taxpayer, in general, to deduct ratably over a specified period any qualified expenditure to which an election under § 59(e) applies, beginning with the taxable year in which such expenditure was made (or, in the case of intangible drilling and development expenditures, beginning with the month in which such expenditure was paid or incurred).

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 expenditures) and § 617(a) (relating to mining exploration expenditures).

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) provides that 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 statement must be filed 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. Additionally, 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).

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 1.59-1(c)(1) provides that an election under § 59(e) may be revoked only with the consent of the Commissioner and that such consent will only be granted in rare and unusual circumstances. The revocation, if granted, will be effective in the first taxable year in which the § 59(e) election was applicable. However, if the period of limitations for the taxable year the § 59(e) election was applicable has expired, the revocation, if granted, will be effective in the earliest taxable year for which the period of limitations has not expired.

Section 1.59-1(c)(2) provides, in part, that a taxpayer requesting consent to revoke a § 59(e) election must submit the request prior to the end of the taxable year the applicable amortization period described in § 59(e)(1) ends.

Section 1.59-1(c)(3) provides that a request to revoke a § 59(e) election must contain all of the information necessary to demonstrate the rare and unusual circumstances that would justify granting revocation.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time 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.

Section 301.9100-1(b) provides that the term “regulatory election” includes an election the due date of which is prescribed by a regulation published in the Federal Register.

Sections 301.9100-1 through 301.9100-3 provide the standards used to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a).

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.

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).

ANALYSIS

The Internal Revenue Service (IRS) has a strong administrative need for elections to be final. Allowing taxpayers to revoke elections without restriction places an undue administrative burden on the IRS's enforcement of the tax law, particularly when revoking an election requires a recalculation of tax liability for several taxable years. This need for finalization in elections is reflected in § 1.59-1(c)(1), where the Commissioner is authorized by the Secretary to permit a taxpayer to revoke a § 59(e) election only in "rare and unusual circumstances." Although the term "rare and unusual" is not specifically defined in the regulations, based on the plain meaning of the term, it is only satisfied when the facts and circumstances present an infrequent or uncommon occurrence.

Here, Taxpayer has demonstrated that the totality of its facts and circumstances constitute "rare and unusual circumstances" as required by § 1.59-1(c). But for the unforecastable, localized, and rare Natural Event, Taxpayer would have made § 59(e) elections for Tax Year for all its Expenditures. Because of the Natural Event, Taxpayer was not prepared to identify, and, therefore, did not identify those Expenditures that were directly attributable to the Natural Event. Taxpayer requests to revoke its existing § 59(e) elections solely so that it can request § 301.9100-3 relief to make new and late § 59(e) elections for all its Expenditures for Tax Year, including those related to the Natural Event. Taxpayer is not seeking to revisit a choice that it made to make its existing § 59(e) elections for certain Expenditures because of a subsequent occurrence; rather, it is seeking to include Expenditures in the elections that it missed at the time of the election because of the Natural Event. Moreover, Taxpayer has a historic practice of making § 59(e) elections for all its Expenditures to maximize its use of production tax credits and would have done the same in Tax Year had it timely identified the missed Expenditures. Therefore, the elections are no more advantageous to Taxpayer now than they would have been at the time of the original elections. Because Taxpayer's facts, taken together, demonstrate an infrequent or uncommon occurrence, we find that they satisfy the "rare and unusual circumstances" standard in § 1.59-1(c).

Additionally, based solely on the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied.

CONCLUSION

Based solely on the information submitted and the representations made, we conclude that the requirements of § 1.59-1(c)(1) are satisfied, and, therefore, Taxpayer may revoke its § 59(e) elections for Tax Year. Additionally, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, the Commissioner grants Taxpayer an extension of time of 120 days from the date of this letter to (1) revoke its existing § 59(e) elections for Expenditures and (2) make new and late elections under § 59(e) and § 1.59-1(b)(1) to deduct ratably over a 60-month period its intangible drilling and development expenditures and over 10-year period its mining exploration expenditures. The § 59(e) elections for Tax Year must comply with the

manner-of-election requirements of § 1.59-1(b)(1).

In making the elections for Tax Year, Taxpayer must attach a copy of this letter ruling to its amended consolidated federal income tax return. Alternatively, if Taxpayer files its amended consolidated federal income tax return electronically, it may satisfy this requirement by attaching a statement to its amended return that provides the date and control number of the letter ruling.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer 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 ruling request, it is subject to verification on examination. Except as specifically set forth above, we express or imply 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 or imply no opinion concerning whether Taxpayer satisfies the requirements of §§ 59(e), 263(c) and 617(a).

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By: *Jennifer A. Records*
_____
Jennifer A. Records
Senior Technician Reviewer, Branch 6
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
Copy for § 6110 purposes

cc: