

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ECE:B02

PLR-119788-24

Date:

April 22, 2025

Re:

Legend

Taxpayer =

Location =

Lessee =

Tax Year =

Discovery Year =

Date 1 =

Date 2 =

Parent Group =

Tax Advisor =

Dear :

This letter responds to your letter dated October 28, 2024, submitted on behalf of Taxpayer requesting extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make a late election under § 1.48-4 of the Income Tax Regulations for Tax Year.

FACTS

According to the relevant facts submitted and representations made, Taxpayer was formed to design, install, and maintain the solar photovoltaic energy generation facility

(the Facility) in Location. Taxpayer represents that the Facility is eligible for the energy credit under § 48 (Tax Credit).

Lessee was formed to lease the Facility, and ultimately became a partner of Taxpayer. On Date 1, Taxpayer entered into a lease with Lessee, in which Taxpayer agreed to pass through to Lessee the Tax Credit related to the Facility.

Under the terms of the lease, Taxpayer was required to file an election under Treas. Reg. § 1.48-4(f) by the due date of Lessee's return, including extensions (the Election).

On Date 2, Taxpayer placed certain qualified solar property into service at the Facility and intended to make the Election timely for the property to be treated as owned by Lessee for purposes of any applicable Tax Credits.

Taxpayer does not maintain a tax department and relies upon personnel at Parent Group to engage outside tax advisor to assist with its tax filings. Parent Group provided Tax Advisor the lease and other relevant documents necessary to prepare Taxpayer's and Lessee's Tax Year tax returns.

Taxpayer timely filed its Tax Year return. Taxpayer's Form 1065 included a Schedule K-1 issued to Lessee, which reflected the qualified solar assets passed through to Lessee, as well as potential credits and section 50(d) income, consistent with the intended tax treatment; however, the Election was inadvertently not filed. Lessee's timely filed Form 1065 for Tax Year also reflected allocated eligible solar property and corresponding information at the partner level. At the time Taxpayer filed its Tax Year tax return, it believed the Election had been timely made pursuant to the terms of the lease.

In Discovery Year, it was discovered that Taxpayer's Tax Year return did not include the Election.

RULING REQUESTED

Taxpayer requests an extension of time under § 301.9100-1 and § 301.9100-3 to file a late election with Lessee pursuant to § 1.48-4(f) and to file a copy pursuant to § 1.48-4(j).

LAW AND ANALYSIS

Section 38(a) allows a credit against the tax for the taxable year in an amount equal to the sum of: (1) the business credit carryforwards carried to the taxable year, (2) the amount of the current year business credit, plus (3) the business credit carrybacks carried to the taxable year.

Under § 38(b)(1), the amount of the current year business credit includes the investment credit under § 46. Under § 46(2), the energy credit is a component of the investment credit.

Section 48(a)(1) provides that, for purposes of § 46, except as provided in paragraphs (1)(B), (2)(B), and (3)(B) of subsection (c), the energy credit for any taxable year is the energy percentage of the basis of each energy property placed in service during such taxable year.

Section § 50(d)(5), makes applicable rules similar to the rules of former § 48(d) (relating to certain leased properties). Under former § 48(d)(1), a person (other than a person referred to in former § 46(e)(1) who is a lessor of property may (at such time, in such manner, and subject to such conditions as are provided by regulations prescribed by the Secretary) elect with respect to any new section 38 property (other than property described in former § 48(d)(4)) to treat the lessee as having acquired such property.

Section 1.48-4(a)(1) provides that a lessor of property may elect to treat the lessee of such property as having purchased such property for purposes of the credit allowed by § 38, if the conditions contained in § 1.48-4(a)(1)(i)-(v) are satisfied.

Section 1.48-4(a)(1)(iv) requires a statement of election to treat the lessee as a purchaser to be filed in the manner and within the time provided in § 1.48-4(f) or (g).

Section 1.48-4(f)(1) provides that the election of a lessor with respect to a particular property (or properties) must be made by filing a statement with the lessee, signed by the lessor and including the written consent of the lessee, containing the information as described in § 1.48-4(f)(1)(i)-(vii).

Section 1.48-4(f)(2) provides that the § 1.48-4(f)(1) election statement must be filed with the lessee on or before the due date (including any extensions of time) of the lessee's return for the lessee's taxable year during which possession of the property is transferred to the lessee.

Section 1.48-4(j) provides, in part, that the lessor and the lessee shall keep as a part of their records the statement referred to in § 1.48-4(f)(1), and that the lessor shall attach to his income tax return a summary statement of all property leased during his taxable year with respect to which an election is made.

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 301.9100-2 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.

CONCLUSIONS

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 in accordance with § 1.48-4(f). Further, Taxpayer must file an amended return for Tax Year with the appropriate service center, consistent with this ruling, attaching a summary statement as required under § 1.48-4(j) and a copy of this letter. A copy is enclosed for that purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting 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 representative.

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Sincerely,

Maggie Stehn
Senior Counsel, Branch 2
Office of Associate Chief Counsel
(Energy, Credits, and Excise Tax)

Enclosure (1)

cc: