

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

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CC:PSI:6 PLR-102131-01  
Date:  
April 12, 2001

Legend:

Taxpayer =

Property =

D1 =

D2 =

D3 =

D4 =

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 qualified progress expenditures election under section 47(d)(5) of the Internal Revenue Code.

**Facts**

Taxpayer represents that the facts are as follows:

Taxpayer, the owner of Property, incurred rehabilitation expenditures with respect to the Property beginning in D2 and also in D3. Based on the advice of Taxpayer's accountant, Taxpayer did not make an election under section 47(d)(5) to take the rehabilitation credit for progress expenditures and, therefore, did not claim the rehabilitation credit for progress expenditures incurred with respect to the Property on their income tax returns for the taxable years ended in D2 and D3.

Taxpayer has filed the Historic Preservation Certification Application (Parts 1 and

2) with the United States Department of the Interior (Part 1 in D2 and Part 2 in D3). The United States Department of the Interior has determined that the Property contributes to the significance of the district and is a certified historic structure for purpose of rehabilitation, and has issued Taxpayer a preliminary certification for the rehabilitation of the Property. Taxpayer estimates that the completion date for all phases of the rehabilitation of the Property will be in D4.

### **Law and Analysis**

Section 47(a)(2) provides that the rehabilitation credit for any taxable year includes an amount equal to 20 percent of the qualified rehabilitation expenditures with respect to any certified historic structure. The term "certified historic structure" is defined in section 47(c)(3)(A) as meaning any building and its structural components that is listed in the National Register, or is located in a registered historic district and is certified by the Secretary of the Interior as being of historic significance to the district.

Section 1.48-12(f)(2) of the Income Tax Regulations provides that the investment credit for qualified rehabilitation expenditures is allowed in the taxable year in which the property attributable to the expenditure is placed in service. However, under certain circumstances, section 47(d) allows taxpayers to elect to take qualified rehabilitation expenditures into account for the taxable year in which such expenditures are paid or incurred, instead of when the rehabilitated property is placed in service.

Section 47(d)(5) provides that the election made by taxpayers under section 47(d) applies to the taxable year for which made and all subsequent taxable years, and once made, may be revoked only with the consent of the Secretary. Section 1.46-5(o)(2) provides, in part, that the election must be made on Form 3468 and filed with the original income tax return for the first taxable year to which the election will apply. Therefore, in the present case, Taxpayer should have filed the election under section 47(d)(5) with their income tax return for the taxable year ended in D2.

If the final certification of completed work has not been issued by the U.S. Department of Interior at the time the tax return is filed for the year in which the rehabilitation credit for a certified historic structure is claimed, section 1.48-12(d)(7)(ii) provides that the taxpayer must attach to the Form 3468 a copy of the first page of the Historic Preservation Certification Application-Part 2-Description of Rehabilitation, with an indication that it has been received by the U.S. Department of Interior, together with proof that the building is a certified historic structure or that such status has been requested. The taxpayer must submit a copy of the final certification as an attachment to Form 3468 with the first income tax return filed after the receipt by the taxpayer of the certification.

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 section 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).

Section 301.9100-3(d)(2) provides that for relief to be granted, the IRS may require the taxpayer to consent under section 6501(a) to an extension of the period of limitations on assessment for the taxable year in which the regulatory election should have been made and any taxable year that would have been affected by the election had it been timely made.

### **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 election under section 47(d)(5) to take the rehabilitation credit for progress expenditures incurred with respect to the Property until 60 calendar days following the date of this letter. Taxpayer must make the election on Form 3468 with their amended federal income tax returns for the taxable years ended in D2 and D3, and must comply with the requirements of section 1.48-12(d)(7)(ii) with respect to the documents to be attached to Form 3468. In addition, a copy of this letter along with a copy of the election must be sent to the SB/SE Official. A copy is enclosed for that purpose.

If Taxpayer fails to receive final certification of completed work prior to the date that is 30 months after the date that Taxpayer filed the original federal income tax return for the taxable year ended in D2, Taxpayer must submit a written statement to the appropriate Service official in the operating division that has examination jurisdiction over Taxpayer's tax returns at that time stating such fact prior to the last day of the 30<sup>th</sup> month, and must consent under section 6501(c)(4) to an extension of the period of limitations on assessment for the taxable years ended in D2 and D3.

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

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative. We are also sending a copy of this letter to the SB/SE Official.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3)

provides that it may not be used or cited as precedent.

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

Enclosures: Copy of this letter  
Copy for section 6110 purposes