Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B06
PLR-161370-04
Date:
April 08, 2005

Re: Request for Extension of Time to Make the Election Not to Deduct the Additional First Year Depreciation

Parent =

Taxpayer =
A =
Date1 =
Date2 =
LMSB Official =

Dear :

This letter responds to a letter dated November 18, 2004, and supplemental correspondence, submitted by Parent on behalf of Taxpayer requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the election not to deduct the additional first year depreciation under § 168(k) of the Internal Revenue Code for certain qualified property placed in service in the taxable year ended Date1 (the A taxable year).

FACTS

Parent represents that the facts are as follows:

Taxpayer is a member of an affiliated group of corporations that is headed by Parent and that files consolidated federal income tax returns. Parent timely filed its consolidated federal income tax return for the taxable year ended Date1, sometime on or before Date2. The extended due date for this income tax return was Date2. On this return, Taxpayer did not deduct the 30-percent additional first year depreciation for all qualified property, and the 50-percent additional first year depreciation for all 50-percent bonus depreciation property, placed in service during the A taxable year. However,

Parent and Taxpayer inadvertently failed to attach the election out statement to the return.

RULING REQUESTED

Accordingly, Taxpayer requests an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the election not to deduct the additional first year depreciation under § 168(k) for all property placed in service during the A taxable year that qualifies for the additional first year depreciation.

LAW AND ANALYSIS

Section 168(k)(1) provides a 30-percent additional first year depreciation deduction for the taxable year in which qualified property is placed in service by a taxpayer. Section 168(k)(4) provides a 50-percent additional first year depreciation deduction for the taxable year in which 50-percent bonus depreciation property is placed in service by a taxpayer.

Section 168(k)(2)(D)(iii) provides that a taxpayer may elect not to deduct the 30-percent additional first year depreciation for any class of property placed in service during the taxable year. The term “class of property” is defined in § 1.168(k)-1T(e)(2) of the temporary Income Tax Regulations as meaning, in general, each class of property described in § 168(e) (for example, 5-year property).

Section 168(k)(4)(E) provides that a taxpayer may elect to deduct 30-percent, instead of 50-percent, additional first year depreciation for any class of property that is 50-percent bonus depreciation property placed in service during the taxable year. If this election is made, § 1.168(k)-1T(e)(1)(ii)(A) provides that the allowable additional first year depreciation deduction is determined as though the class of property is qualified property under § 168(k)(2). Section 1.168(k)-1T(e)(1)(ii)(B) further provides that a taxpayer may elect not to deduct both 30-percent and 50-percent additional first year depreciation for any class of property that is 50-percent bonus depreciation property placed in service during the taxable year.

Section 1.168(k)-1T(e)(3)(i) provides that the election not to deduct additional first year depreciation must be made by the due date (including extensions) of the federal tax return for the taxable year in which the property is placed in service by the taxpayer.

Section 1.168(k)-1T(e)(3)(ii) provides that the election not to deduct additional first year depreciation must be made in the manner prescribed on Form 4562, “Depreciation and Amortization,” and its instructions. The instructions to Form 4562 for the A taxable year provided that the election not to deduct the additional first year depreciation is made by attaching a statement to the taxpayer’s timely filed tax return indicating that the taxpayer is electing not to deduct the additional first year depreciation

and the class of property for which the taxpayer is making the election. Section 1.168(k)-1T(e)(3)(ii) further provides that the election is made separately by each person owning qualified property or 50-percent bonus depreciation property (for example, for each member of a consolidated group by the common parent of the group, by the partnership, or by the S corporation).

Under § 301.9100-1, the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election.

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 § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief under § 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 the grant of relief will not prejudice the interests of the government.

CONCLUSIONS

Based solely on the facts and representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Parent and Taxpayer are granted 60 calendar days from the date of this letter to make the election not to deduct the additional first year depreciation under § 168(k) for all property placed in service by Taxpayer during the A taxable year that qualifies for the additional first year depreciation. This election must be made by Parent filing an amended consolidated federal tax return for that taxable year, with a statement indicating that Taxpayer is electing not to deduct the additional first year depreciation for all property placed in service during the taxable year ended Date1.

Except as specifically set forth above, we express no opinion concerning the federal income tax consequences of the facts described above under any other provisions of the Code. Specifically, no opinion is expressed or implied on whether any item of depreciable property placed in service in the taxable year ended Date1, is eligible for the additional first year depreciation deduction.

In accordance with the power of attorney, we are sending copies of this letter to Taxpayers' authorized representatives. We are also sending a copy of this letter to the LMSB Official.

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

Sincerely,

HEATHER C. MALOY

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):
copy of this letter
copy for section 6110 purposes