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Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B06
PLR-111271-05
Date:
August 31, 2005

Re: Request for Extension of Time to Make or File Certain Elections and Certifications

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Dear :

This letter responds to a letter dated February 25, 2005, and supplemental correspondence, submitted by Parent requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make or file certain elections and certifications on behalf of Parent and certain affiliated corporations for the taxable year ended on Date1 (the A taxable year).

FACTS

Parent represents that the facts are as follows:

Parent is the common parent of numerous subsidiaries filing a consolidated federal corporation income tax return on a calendar year basis.

On Date2, the extended due date, Parent timely prepared and signed its consolidated federal corporation income tax return for the A taxable year with accompanying elections, notices, and certifications. Parent hired a courier service to deliver this return to Post Office for mailing on Date2. The Post Office is located across the street from Building, which was in a state of high security on Date2 as a result of Agency having identified Building as allegedly targeted by terrorists. Due to unforeseen events arising from this terrorist threat, the courier could not, and did not, timely file Parent's consolidated federal corporation income tax return for the A taxable year. That return was filed on Date3, the day after Date2. Until the morning of Date3, Parent was unaware of the courier delay.

Among other required or permitted documents and schedules, Parent's A consolidated federal corporation income tax return contained the following elections or certifications:

1) Election statement under § 1.168(k)-1T(e) of the temporary Income Tax Regulations to elect not to deduct the additional first-year depreciation allowance for all property placed in service during the A taxable year by Parent and Sub1-Sub59;

2) Election and agreement described in § 1.1503-2(g)(2)(i) on behalf of Sub20, Sub23, Sub35, Sub40, Sub48, Sub64, Sub66, Sub69, and Sub70; and

3) Annual certifications described in § 1.1503-2(g)(2)(vi)(B) on behalf of Sub60-Sub68.

RULING REQUESTED

Accordingly, Parent requests an extension of time pursuant to § 301.9100-03 of the Procedure and Administration Regulations: (1) to make the election not to deduct the additional first year depreciation under § 168(k) of the Internal Revenue Code for all property placed in service during the A taxable year by Parent and Sub1-Sub59; (2) to file the election and agreement described in § 1.1503-2(g)(2)(i) for the A taxable year on behalf of Sub20, Sub 23, Sub35, Sub40, Sub48, Sub64, Sub66, Sub69, and Sub70; and (3) to file the annual certification described in § 1.1503-2(g)(2)(vi)(B) for the A taxable year on behalf of Sub60-Sub68.

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) 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).

Section 1.1503-2(b) provides, in general, that a dual consolidated loss of a dual resident corporation cannot offset the taxable income of any domestic affiliate in the taxable year in which the loss is recognized or in any other taxable year. However, pursuant to § 1.1503-2T(g)(2)(i), § 1.1503-2(b) does not apply to a dual consolidated loss if the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner elects to be bound by § 1.1503-2(g)(2) and § 1.1503-2T(g)(2). This election and agreement must be attached to the timely filed U.S. income tax return for the taxable year in which the dual consolidated loss is incurred. In addition, § 1.1503-2T(g)(2)(vi)(B) requires the consolidated group, unaffiliated domestic resident corporation, or unaffiliated domestic owner to file with its income tax return for each of the 15 taxable years following the taxable year in which the dual consolidated loss is incurred a certification that the losses, expenses, or deductions that make up the dual consolidated loss have not been used to offset the income of another person under the tax laws of a foreign country.

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 is granted an extension of time: (1) to make the election not to deduct the additional first year depreciation under § 168(k) for all property placed in service by Parent and Sub1-Sub59 during the A taxable year; (2) to file the election and agreement described in § 1.1503-2(g)(2)(i) on behalf of Sub20, Sub23, Sub35, Sub40, Sub48, Sub64, Sub66, Sub69, And Sub70; and (3) to file the annual certification described in § 1.1503-2(g)(2)(vi)(B) on behalf of Sub60-Sub68. In this regard, we will consider such elections and certifications attached to Parent's consolidated federal corporation income tax return for the A taxable year to be timely filed. A copy of this letter ruling should be associated with such elections and certifications.

The granting of an extension of time is not a determination that Parent or any entity listed as Sub1-Sub70 is otherwise eligible to file the elections and agreements. See § 301.9100-1(a). For example, pursuant to § 1.1503-2(c)(15)(iv), a taxpayer that is subject to mirror legislation enacted by a foreign country may be ineligible to file the election and agreement described in § 1.1503-2(g)(2)(i).

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 A taxable year is eligible for the additional first year depreciation deduction, or on the classification of the entities listed as Sub1-Sub70 as separate units. Further, this letter ruling does not grant an extension of time for filing Parent's consolidated federal corporation income tax return for the A taxable year.

In accordance with the power of attorney, we are sending a copy of this letter to Parent's authorized representative. 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