Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Refer Reply To:
CC:PSI:B06 – PLR-160989-05

Date:
March 03, 2006

Re:

Taxpayer =

A =
B =
C =
D =
E =
F =
G =
SB/SE Official =

Dear :

This letter responds to a letter dated November 4, 2005, and supplemental correspondence, requesting the consent of the Commissioner of Internal Revenue to revoke Taxpayer's election not to deduct the 30-percent and 50-percent additional first year depreciation made on its B federal tax return for the taxable year ended A.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer, a calendar year taxpayer, operates a rent-to-own franchise known as C. Taxpayer's inventory is 3-year property under § 168 of the Internal Revenue Code. Taxpayer is an accrual basis taxpayer.

For the federal tax return timely filed for the taxable year ended A, Taxpayer made the election under § 168(k)(2)(D)(iii) not to deduct the 30-percent and 50-precent additional first year depreciation for qualified property and 50-percent bonus

depreciation property acquired during that taxable year. Taxpayer made this election based on the advice of its qualified professional tax preparer (the "former preparer"). The former preparer advised Taxpayer that it should elect out of the additional first year depreciation for B to minimize tax losses.

As a result of this election, Taxpayer reported a large alternative minimum tax (AMT) liability on its B Federal income tax return. As Taxpayer acquires and holds assets out for lease, Taxpayer depreciates this property and reports the property for tax purposes as cost of goods sold. If Taxpayer leases this property to a customer who holds the rental contract to maturity, Taxpayer would not have to make an AMT adjustment for the asset. However, in most instances a leased asset is purchased by a customer before the contract matures, resulting in a negative AMT adjustment. This negative adjustment is typically smaller than the positive adjustment the Taxpayer would make on a newly acquired asset.

The former preparer was not familiar with the rent-to-own industry and had not previously performed tax or accounting work for Taxpayer. In prior years Taxpayer's tax work was handled by a different certified public accountant (CPA) at E. However, at the time Taxpayer's B return was to be prepared, that CPA had left E. Consequently, E assigned Taxpayer's account to the former preparer. Taxpayer continued to rely upon E based on Taxpayer's past experience with the firm. Taxpayer assumed that the former preparer would be competent to handle Taxpayer's account.

In G, Taxpayer hired a new accounting firm, F, to handle Taxpayer's tax and accounting needs. While reviewing Taxpayer's files, one of F's CPAs realized that the former preparer had failed to account for AMT when the former preparer advised Taxpayer to make the election under § 168(k)(2)(D)(iii) for the B taxable year.

Taxpayer was unable to secure an affidavit from the former preparer.

D, a CPA with E who was not personally involved in preparing Taxpayer's B return, represents the following. The former preparer is no longer employed at E. D's office prepared Taxpayer's B federal income tax return. The working papers prepared by the former preparer indicate that Taxpayer's B federal income tax return originally included bonus depreciation deductions, but that the former preparer, after consulting Taxpayer, subsequently revised Taxpayer's B return to elect out of additional first year depreciation because of non-tax issues.

In response to D's representations, Taxpayer represents that it has no recollection of discussing non-tax issues with the former preparer.

Upon discovering the former preparer's error, Taxpayer submitted this request to revoke the election not to deduct the 30-percent and 50-percent additional first year depreciation made on Taxpayer's B federal tax return for the taxable year ended A.

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 or 50-percent additional first year depreciation for any class of property placed in service during the taxable year.

Section 1.168(k)-1T(e)(1) of the temporary Income Tax Regulations provides that, if a taxpayer makes an election not to deduct additional first year depreciation, the election applies to all qualified property or 50-percent bonus depreciation property, as applicable, that is in the same class of property and placed in service in the same taxable year.

Section 1.168(k)-1T(e)(1)(i) provides that the election not to deduct additional first year depreciation applies to an election not to deduct the 30-percent additional first year depreciation for any class of property that is qualified property placed in service during the taxable year. If this election is made, no additional first year depreciation deduction is allowable for the property placed in service during the taxable year in the class of property.

Section 1.168(k)-1T(e)(1)(ii)(B) provides that, for any class of property that is 50-percent bonus depreciation property placed in service during the taxable year, a taxpayer may make an election not to deduct any additional first year depreciation. If this election is made, no additional first year depreciation deduction is allowable for the class of property.

Section 1.168(k)-1T(e)(2)(i) defines a class of property for purposes of the election not to deduct additional first year depreciation as, generally, each class of property described in section 168(e) (for example, 5-year property).

Section 1.168(k)-1T(e)(3)(i) provides that, generally, any election specified in § 1.168(k)-1T(e)(1) must be made by the due date (including extensions) of the Federal tax return for the taxable year in which the qualified property or the 50-percent bonus depreciation property, as applicable, is placed in service by the taxpayer.

Section 3.04 of Rev. Proc. 2002-33, 2002-1 C.B. 963, provides that an election not to deduct the additional first year depreciation for a class of property that is qualified property or Liberty Zone property placed in service during the taxable year is revocable only with the prior written consent of the Commissioner of Internal Revenue. To seek the Commissioner's consent, the taxpayer must submit a request for a letter ruling in accordance with the provisions of Rev. Proc. 2006-1, 2006-1 I.R.B. 1 (or any successor).

Taxpayer has requested permission to revoke its election not to deduct the 30-percent and 50-percent additional first year depreciation for qualified property and 50-percent bonus depreciation property placed in service by Taxpayer in the taxable year ended A. Taxpayer's request to revoke its election resulted from its original tax preparer neglecting to account for AMT in calculating Taxpayer's B federal tax liability. This situation is analogous to those situations concerning taxpayers who have not made a particular election provided in the regulations because of inadequate or incorrect advice from either an attorney or accountant knowledgeable in tax matters and subsequently seek extensions of time under section 301.9100-1 of the Procedure and Administration Regulations in which to make the election.

Under section 301.9100-1, the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in sections 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 for 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.

Section 301.9100-3(a) provides that requests for relief under section 301.9100-3 will be granted when the taxpayer provides the 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. The application of similar factors is appropriate to determine whether taxpayers may revoke elections made under section 168(k) not to deduct the additional first year depreciation.

CONCLUSIONS

Based solely on the facts and representations submitted, we conclude that Taxpayer acted reasonably and in good faith and that granting permission to revoke Taxpayer's election not to deduct the 30-percent and 50-percent additional first year depreciation for the taxable year ended A will not prejudice the interests of the government. Accordingly, Taxpayer is granted 60 calendar days from the date of this letter to revoke its election not to deduct the 30-percent and 50-percent additional first year depreciation for all classes of property placed in service by Taxpayer in the taxable

year ended on A. The revocation must be made in a written statement filed with Taxpayer's amended federal tax return for the taxable year ended on A. In addition, a copy of this letter must be attached to this amended return. A copy is enclosed for that purpose.

Except as specifically ruled upon above, no opinion is expressed or implied concerning the tax consequences of the facts described above. Specifically, no opinion is expressed or implied on whether any item of depreciable property placed in service by Taxpayer in the taxable year ended A is eligible for the additional first year depreciation deduction.

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.

In accordance with the power of attorney, we are sending a copy of this letter to Taxpayer's authorized representative. We are also sending a copy of this letter to the SB/SE Official.

Sincerely,

/s/ Peter Friedman

Peter Friedman
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
6110 copy
copy for amended return