

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200731014**  
Release Date: 8/3/2007  
Index Number: 9100.04-00

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.  
Telephone Number:

Refer Reply To:  
CC:PSI:B06  
PLR-144391-06  
Date:  
April 27, 2007

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

- P =
- S1 =
- S2 =
- S3 =
- S4 =
- S5 =
- S6 =
- S7 =
- S8 =
- S9 =
- S10 =
- S11 =
- A =
- B =
- C =
- Date1 =
- Date2 =
- Date3 =
- SBSE Official =

Dear :

This letter responds to a letter dated August 25, 2006, submitted by P on behalf of itself and S1, S2, S3, S4, S5, S6, S7, S8, S8, S9, S10, and S11 (hereinafter, P, S1, S2, S3, S4, S5, S6, S7, S8, S8, S9, S10, and S11 will be collectively referred to as "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 all classes of qualifying property placed in service during the A, B, and C taxable years.

## FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is a calendar year-end affiliated group of corporations that is headed by P and that files consolidated federal income tax returns. Taxpayer is primarily engaged in the business of supplying clean water and treatment and disposal of waste water. Taxpayer timely filed its consolidated federal income tax return for the A taxable year on Date1, for the B taxable year on Date2, and for the C taxable year on Date3. On these returns, 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 those taxable years. However, Taxpayer inadvertently failed to attach the statement to elect not to deduct the additional first year depreciation.

## 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 that is placed in service during the A, B, and C taxable years and 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)-1(e)(2) of the 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)-1(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)-1(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)-1(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)-1(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, B, and C taxable years 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.

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, Taxpayer is 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, B, and C taxable year that qualifies for the additional first year depreciation. This election must be made by Taxpayer by filing an amended consolidated federal tax return for each of these taxable years, with a statement indicating that Taxpayer is electing not to deduct the additional first year depreciation for all property placed in service during that taxable year.

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 during the A, B, and C taxable years 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 SBSE 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,

William P. O'Shea

William P. O'Shea  
Associate Chief Counsel  
(Passthroughs and Special Industries)

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