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Date:
April 27, 2007

Re: Request for Extension of Time to Make Elections Not to Deduct Additional First Year Depreciation and to Use the Alternative Depreciation System

Taxpayer =
Parent =

Date 1 =
Date 2 =
LMSB Official =

Dear :

This letter responds to a letter dated May 2, 2006, 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 two elections. The extension is being requested to make elections under § 168(k) of the Internal Revenue Code not to deduct the additional first year depreciation for all qualified property and all 50-percent bonus depreciation property placed in service by Taxpayer in the taxable year ended Date 1, and under § 168(g)(7) to use the alternative depreciation system (ADS) for all tangible depreciable property placed in service by Taxpayer in the taxable year ended Date 1.

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 relied on a qualified tax professional to prepare its consolidated Federal income tax return for the taxable year ended Date 1. On this timely filed return, Parent did not make the elections under § 168(k) not to deduct the additional first year depreciation for all qualified property and all 50-percent bonus depreciation property placed in service by Taxpayer, and under § 168(g)(7) to use the ADS for all tangible depreciable property placed in service by Taxpayer. Accordingly, Taxpayer determined its depreciation deduction for the taxable year ended Date 1 by using the general depreciation system under § 168(a) instead of the ADS, and by deducting 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.

Parent's consolidated Federal income tax return for the taxable year ended Date 1 reported a consolidated net loss. Further, that return reported that the taxable year ended Date 1 was the last taxable year to which the net operating loss for the taxable year ended Date 2 could be carried over.

Subsequent to the filing of Parent's consolidated Federal income tax return for the taxable year ended Date 1, another tax preparer reviewed that return. The new preparer discovered that the original tax preparer did not advise Parent of the availability of, and consequences of making, the elections under §§ 168(k) and 168(g)(7). Specifically, if these elections were made by Taxpayer, Parent would have reported taxable income for the taxable year ended Date 1 and, as a result, would have used a portion of the net operating loss carryover from Date 2 to reduce any resulting tax liability.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the elections under § 168(k) not to deduct the additional first year depreciation with respect to all qualified property and all 50-percent bonus depreciation property placed in service by Taxpayer in the taxable year ended Date 1, and under § 168(g)(7) to use the ADS for all tangible depreciable property placed in service by Taxpayer in the taxable year ended Date 1.

LAW AND ANALYSIS

Section 167(a) provides that there shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear, and obsolescence of property used in the taxpayer's trade or business.

The depreciation deduction provided by § 167(a) for tangible property placed in service after 1986 generally is determined under § 168. Section 168 prescribes two methods of accounting for determining depreciation allowances. One method is the general depreciation system in § 168(a), and the other method is the alternative

depreciation system in § 168(g). Under either depreciation system, the depreciation deduction is computed by using a prescribed depreciation method, recovery period, and convention.

Section 168(g)(7) permits a taxpayer to elect for any class of property for any taxable year to use the ADS for determining depreciation for all property in that class placed in service during that taxable year. However, in the case of nonresidential real property, the election is made separately with respect to each property. An election to use ADS is irrevocable.

Section 301.9100-7(T)(a)(1) provides that the election under § 168(g)(7) must be made for the taxable year in which the property is placed in service. Section 301.9100-7T(a)(2)(i) further provides that this election must be made by the due date (including extensions) of the tax return for the taxable year for which the election is to be effective. Section 301.9100-7T(a)(3)(i) provides that the election under § 168(g)(7) is made by attaching a statement to the tax return for the taxable year for which the election is to be effective.

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 taxable year ended Date 1 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)-1(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, 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 taxable year ended Date 1 that qualifies for the additional first year depreciation and the election under § 168(g)(7) to use the ADS for determining depreciation for all tangible depreciable property placed in service by Taxpayer during the taxable year ended Date 1. These elections must be made by Parent filing an amended consolidated Federal income tax return for the taxable year ended Date 1, with a statement indicating that Taxpayer is electing not to deduct the additional first year depreciation for all property placed in service by Taxpayer during the taxable year ended Date 1, and that Taxpayer is electing to use the ADS for all tangible depreciable property placed in service by Taxpayer during the taxable year ended Date 1. Parent also must file amended consolidated Federal income tax returns for any affected succeeding taxable years.

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 by Taxpayer in the taxable year ended Date 1 is eligible for the additional first year depreciation deduction or is required to use the ADS pursuant to § 168(g)(1)(A) through (D).

In accordance with the power of attorney, we are sending copies of this letter to Taxpayer's authorized representatives. We are also sending a copy of this letter to the appropriate 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,

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