Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B06
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Date:
April 30, 2007

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

Taxpayer =
State =
Shareholder =
Date1 =
Date2 =
SBSE Official =

Dear :

This letter responds to a letter dated May 19, 2006, and supplemental correspondence, submitted by 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 in the taxable years ended Date1 and Date2.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is an S corporation that is wholly owned by Shareholder, located in State, and engaged in the business of short term automobile leasing. Shareholder files as a resident of State for tax purposes. Taxpayer timely filed its federal income tax return for the taxable years ended Date1. Taxpayer filed its federal income tax return for the taxable year ended Date2 late.

State adopts federal taxable income as the starting point for determining State taxable income, including any election made by the taxpayer in accordance with the Internal Revenue Code. On these returns, Taxpayer, based on the advice of its tax return preparer, did not make the election not to deduct the additional first year depreciation for all qualifying property placed in service during each of the taxable years ended Date1 and Date2 and, therefore, did 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, after Taxpayer's federal income tax return for the taxable year ended Date2 was prepared and after Shareholder's federal income tax return for that taxable year was filed, Taxpayer's tax return preparer determined that Taxpayer should have elected not to deduct the additional first year depreciation for all qualifying property placed in service during each of the taxable years ended Date1 and Date2 due to State tax consequences. Prior to the date Taxpayer filed its taxable return for the taxable year ended Date1, State enacted a statute that did not fully adopt, retroactively to the 2001 taxable year, the additional first year depreciation allowed under § 168(k). Under the State tax statute, it was disadvantageous for Taxpayer to not make the election not to deduct the additional first year depreciation for each of the taxable years in question because of the effect it had upon Shareholder's State tax liability.

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 taxable years ended Date1 and Date2 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 taxable years ended Date1 and Date2 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 years ended Date1 and Date2 that qualify for the additional first year depreciation. This election must be made by Taxpayer by filing an amended 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 in the taxable years ended Date1 and Date2 is eligible for the additional first year depreciation deduction. Further, this letter ruling does not grant an extension of time for filing Taxpayer's federal tax return for the taxable year ended Date2.

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 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