

returns, Taxpayer deducted 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 by Taxpayer during those taxable years.

Taxpayer does not have an internal tax department. As a result, Taxpayer relied on a qualified tax professional to prepare its consolidated federal income tax returns for the taxable years ended Date1 and Date2. Taxpayer was not told, nor did Taxpayer know independently, that Taxpayer could elect not to deduct the additional first year depreciation for eligible property placed in service by Taxpayer during the taxable years ended Date1 and Date2. If the officers of P had been aware of this election, P would have made the election not to deduct the additional first year depreciation for all eligible property placed in service by Taxpayer during the taxable years ended Date1 and Date2.

RULING REQUESTED

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 qualified property and all 50-percent bonus depreciation property placed in service by Taxpayer in the taxable years ended Date1 and Date2.

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.

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 classes of 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 P 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 classes of property placed in service by Taxpayer 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 by Taxpayer during the taxable years ended Date1 and Date2 is eligible for the additional first year depreciation deduction, or on whether Taxpayer's classification of each item of depreciable property placed in service by Taxpayer during the taxable years ended Date1 and Date2 is proper under § 168(e).

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 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,

Kathleen Reed
Branch Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax and Accounting)

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