



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 return for the taxable year ended Date1. Taxpayer was not told, nor did Taxpayer know independently, that Taxpayer could elect to use the ADS to determine depreciation for certain or all classes of property placed in service during the taxable year ended Date1. If the officers of P had been aware of this election, P would have made the election to use the ADS for certain classes of property placed in service during the taxable year ended Date1.

#### RULING REQUESTED

Taxpayer requests an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the election to use the ADS under § 168(g)(7) for 5-year property placed in service by Taxpayer in the taxable year ended Date1.

#### 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 ADS in § 168(g).

In the case of any property to which an election under § 168(g)(7) applies, § 168(g)(1) provides that the depreciation deduction provided by § 167(a) is determined under the ADS. Pursuant to § 168(g)(2), the ADS is depreciation determined by using the straight line method (without regard to salvage value), the applicable convention determined under § 168(d), and a recovery period determined under the table prescribed in § 168(g)(2)(C). For most personal property, the recovery period is the property's class life. Section 168(g)(3) provides special rules for determining class life.

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. Once made, an election to use ADS is irrevocable.

Section 301.9100-7T(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.

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 to use the ADS under § 168(g)(7) for determining depreciation for 5-year property placed in service by Taxpayer in the taxable year ended Date1. This election must be made by P filing an amended consolidated federal tax return for the taxable year ended Date1, with a statement indicating that Taxpayer is electing to use the ADS under § 168(g)(7) for determining depreciation for 5-year 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 Taxpayer's classification of each item of depreciable property placed in service by Taxpayer during the taxable year ended Date1 is proper under § 168(e), or whether Taxpayer's determination of the recovery period for each item of 5-year property placed in service by Taxpayer during the taxable year ended Date1 is proper under § 168(g)(2)(C) and (3) for purposes of determining depreciation under the ADS.

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

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