Internal Revenue Service

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Person To Contact:
, ID No.

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Refer Reply To:
CC:ITA:B07
PLR-128376-09
Date: 12/2/09

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

Legend

LP =

P1 =

P2 =

P3 =

P4 =

P5 =

Date 1 =

Date 2 =

Date 3 =

A =

B =

C =

D =

E =

F =

Dear :

This letter responds to a letter dated June 8, 2009, submitted by LP on behalf of P1, P2, P3, P4, and P5 (hereinafter, P1, P2, P3, P4, and P5 will be collectively referred to as "Taxpayers"), 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 qualifying property placed in service during the taxable years ended Date 1 (the A taxable year), Date 2 (the B taxable year), and Date 3 (the C taxable year).

FACTS

Taxpayers represent that the facts are as follows:

LP is a calendar year-end accrual basis S corporation. Through a number of Qualified Subchapter S corporations ("Q-subs"), LP is the tax matters partner ("TMP") and owns a limited partnership interest in P1, P2, P3, P4, and P5.

P1, P2, P3, P4, and P5 are calendar year-end accrual basis limited partnerships. P1 and P5 are engaged in the business of owning and operating D. P2 and P4 are engaged in the business of owning and operating a E. P3 is engaged in the business of owning and operating a F.

P1 placed property in service during the C taxable year that qualified for the additional first year depreciation deduction. P2 and P3 placed property in service during the A and B taxable years that qualified for the additional first year depreciation deduction. P4 and P5 placed property in service during the A, B, and C taxable years that qualified for the additional first year depreciation deduction.

Taxpayers filed their federal tax returns for the A, B, and C taxable years. On these returns, Taxpayers 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, Taxpayers inadvertently failed to attach the statements to elect not to deduct the additional first year depreciation. The period of limitation on assessment under § 6501(a) for the A, B, and C taxable years has expired.

RULING REQUESTED

Taxpayers request 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 qualifies for the additional first year depreciation deduction and that is placed in service by P1 during the C taxable year, that is placed in service by P2 and P3 during the A and B taxable years, and that is placed in service by P4 and P5 during the A, B, and C taxable years.

LAW AND ANALYSIS

Any reference in this letter ruling to § 168(k) shall be treated as a reference to § 168(k) as in effect on the day before the date of the enactment of the Economic Stimulus Act of 2008.

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.

Section 301.9100-3(c)(1) provides that the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(1)(ii) provides that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under § 6501(a) before the taxpayer’s receipt of a ruling granting relief under §301.9100-3. However, the Service may condition a grant of relief upon a showing that the interests of the Government are not prejudiced under the standards set forth in § 301.9100-3(c)(1)(i).

Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Similarly, if the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made.

CONCLUSION

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,

Taxpayers are 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 Taxpayers during the A, B, and C taxable years that qualifies for the additional first year depreciation deduction. This election must be made by P1 filing a statement indicating that P1 is electing not to deduct the additional first year depreciation for all property placed in service during the taxable year ended Date 3, along with a copy of this letter ruling, with the IRS Service Center where P1 filed its original federal tax return for that taxable year. This election must be made by P2 and P3 filing statements indicating P2 and P3 are electing not to deduct the additional first year depreciation for all property placed in service during the taxable years ended Date 1 and Date 2, along with a copy of this letter ruling, with the IRS Service Center(s) where P2 and P3 filed their original federal tax returns for such taxable years. This election must be made by P4 and P5 filing statements indicating P4 and P5 are electing not to deduct the additional first year depreciation for all property placed in service during the taxable years ended Date 1, Date 2, and Date 3, along with a copy of this letter ruling, with the IRS Service Center(s) where P4 and P5 filed their original federal tax returns for such 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 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 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 yours,

Kathleen Reed

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