Internal Revenue Service

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Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:7
PLR-144862-09

Date:
March 17, 2010

In re:

Legend

P =

X1 =

X2 =

X3 =

X4 =

X5 =

X6 =

X7 =

X8 =

X9 =

A =
B =
C =
D =
E =

F =
G =
H =
Dear :

This letter responds to a letter dated October 2, 2009, and supplemental correspondence submitted, by P on behalf of itself and its affiliated entities, X1, X2, X3, X4, X5, X6, X7, X8, and X9 (hereinafter, P and these affiliated entities are collectively referred to as "Taxpayers"), requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make a general asset account election.

FACTS

Taxpayers represent that the facts are as follows:

For all years involved, Taxpayers have consistently accounted for certain tangible depreciable assets in general asset accounts, and treated dispositions of these assets, in accordance with § 168(i)(4) of the Internal Revenue Code and § 1.168(i)-1 of the Income Tax Regulations. Such assets are included in the following asset classes of Rev. Proc. 87-56, 1987-2 C.B. 674: (1) asset class 0.11, Office Furniture, Fixtures, and Equipment; (2) asset class 0.12, Information Systems; (3) asset class 0.22, Automobiles, Taxis; (4) asset class 48.14, Telephone Distribution Plant; (5) asset class 48.41, CATV-Headend; (6) asset class 48.42, CATV-Subscriber Connection and Distribution Systems; (7) asset class 48.43, CATV-Program Origination; (8) asset class 48.44, CATV-Service and Test; and (9) asset class 48.45, CATV-Microwave Systems.

Except for X1 and X8, the years involved are the taxable years ended A (the E taxable year) through D (the H taxable year). For X1 and X8, the years involved are the taxable years ended B (the F taxable year) through D. The period of limitation on assessment under § 6501(a) has expired for the taxable years ended A through C.

Taxpayers timely filed their federal income tax returns for the years involved. Over these years, Taxpayers engaged different outside tax return preparers to prepare their federal income tax returns. During a meeting with the current outside tax return preparer, Taxpayers discovered that they inadvertently failed to make a general asset account election under § 1.168(i)-1(k) for each of the years involved.

RULING REQUESTED

Accordingly, Taxpayers request an extension of time pursuant to § 301.9100-3 make the election under § 1.168(i)-1(k) to account for certain assets used in Taxpayers' trade or business in one or more general asset accounts pursuant to § 168(i)(4).

LAW AND ANALYSIS

Section 168(i)(4) provides that, under regulations, a taxpayer may maintain one or more general asset accounts for any property to which § 168 applies. Except as provided in the regulations, all proceeds realized on any disposition of property in a general asset account are included in income as ordinary income. Section 1.168(i)-1 provides rules for general asset accounts under § 168(i)(4).

Section 1.168(i)-1(a) provides that the provisions of § 1.168(i)-1 apply only to assets for which an election has been made under § 1.168(i)-1(k).

Section 1.168(i)-1(k)(1) provides that, if a taxpayer makes an election under § 1.168(i)-1(k), the taxpayer consents to, and agrees to apply, all of the provisions of § 1.168(i)-1 to the assets included in a general asset account. Except as provided in § 1.168(i)-1(c)(1)(ii)(A) (special rules for assets generating foreign source income), (e)(3) (special rules applicable to dispositions of assets included in a general asset account), (g) (assets subject to recapture), or (h) (changes in use), an election made under § 1.168(i)-1(k) is irrevocable and will be binding on the taxpayer for computing taxable income for the taxable year for which the election is made and for all subsequent taxable years. An election under § 1.168(i)-1(k) is made separately by each person owning an asset to which § 1.168(i)-1 applies (for example, by each member of a consolidated group, at the partnership level (and not by the partner separately), or at the S corporation level (and not by the shareholder separately)).

Section 1.168(i)-1(k)(2) provides that the election to apply § 1.168(i)-1 shall be made on the taxpayer's timely filed (including extensions) income tax return for the taxable year in which the assets included in the general asset account are placed in service by the taxpayer.

Section 1.168(i)-1(k)(3) provides that, in the year of election, a taxpayer makes the election under this section in the manner provided for on Form 4562 and its instructions. The instructions to Form 4562 provided that the general asset account election is made for the E and F taxable years by checking the box on line 14 on Form 4562 and for the G through H taxable years by checking the box on line 18 on Form 4562.

Section 1.168(i)-1(k)(3) further provides that the taxpayer shall maintain records that identify the assets included in each general asset account, that establish the unadjusted depreciable basis and depreciation reserve of the general asset account, and that reflect the amount realized during the taxable year upon dispositions from each general asset account. The taxpayer's recordkeeping practices should be consistently applied to the general asset accounts.

Under § 301.9100-1, the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9102-2 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 to 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 the 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.

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, Taxpayers are granted 60 calendar days from the date of this letter to make the election under § 1.168(i)-1(k) to account for certain assets used in Taxpayers' trade or business in one or more general asset accounts pursuant to § 168(i)(4). For the taxable years closed by the period of limitations on assessment under § 6501(a), this election must be made by P, X1, X2, X3, X4, X5, X6, X7, X8, and X9 each filing a statement indicating

that each respective entity is making the election under § 1.168(i)-1(k) for tangible depreciable property placed in service during such taxable years and specifying what property is subject to such election, along with a copy of this letter ruling, with the IRS Service Center(s) where these entities filed their original federal tax returns for such taxable years. For the open taxable years, this election must be made by P, X1, X2, X3, X4, X5, X6, X7, X8, and X9 each filing an amended federal income tax return for each such taxable year, attaching to such amended return an amended Form 4562 with the appropriate box checked.

Except as specifically set forth above, no opinion is expressed or implied concerning the Federal income tax consequences of the facts described above. 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 E through H taxable years is proper under Rev. Proc. 87-56.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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

Sincerely,

Kathleen Reed

KATHLEEN REED
Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax and Accounting)

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