

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.  
Telephone Number:

Refer Reply To:  
CC:ITA:7  
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Date:  
April 06, 2010

Re:

Taxpayer =  
A =  
B =  
Date1 =  
Date2 =  
Date3 =  
Date4 =  
Date5 =

Dear :

This letter responds to a letter dated October 9, 2009, and supplemental correspondence, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the election to apply § 168(k)(4) of the Internal Revenue Code.

**FACTS**

Taxpayer represents that the facts are as follows:

Taxpayer is a calendar year-end C corporation engaged in the biopharmaceutical business of discovering, developing, and commercializing therapeutic products for diseases such as diabetes and cancer.

Taxpayer placed in service eligible qualified property during the taxable year ended Date1 (the A taxable year). Taxpayer also has unused credits from taxable years beginning before January 1, 2006, that are allocable to research expenditures. Taxpayer was not a partner in any partnership during the A taxable year and was not a

member of a controlled group (as defined in section 2.05 of Rev. Proc. 2009-16, 2009-6 I.R.B. 449) on Date1.

Taxpayer engaged the outside tax consulting firm, B, to prepare its Form 1120, U.S. Corporation Income Tax Return, for the A taxable year. B prepared a Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns, on or about Date2, and mailed the Form 7004 to Taxpayer on Date3 to be filed by Taxpayer by Date4, the due date (without extensions) of Taxpayer's Form 1120 for the A taxable year. Taxpayer, however, received the Form 7004 after Date4. Consequently, Taxpayer did not timely file the Form 7004 or its federal income tax return for the A taxable year. In the previous taxable year, B filed Form 7004 directly with the Internal Revenue Service on behalf of Taxpayer, and Taxpayer again expected B to file the Form 7004 directly with the Internal Revenue Service for the A taxable year.

Taxpayer filed its federal income tax return for the A taxable year on Date5, which is after Date4. On this return, Taxpayer did not claim the additional first year depreciation for any eligible qualified property placed in service in the A taxable year but did not use the straight line method of depreciation for the eligible qualified property and did not claim the refundable credit resulting from applying § 168(k)(4). Taxpayer represents that it did not make the election under § 168(k)(2)(D)(iii) not to deduct additional first year depreciation for any qualified property (as defined in § 168(k)(2)) placed in service in the A taxable year.

Before the due date (excluding extensions) of Taxpayer's federal income tax return for the A taxable year, Taxpayer discussed making the election to apply § 168(k)(4) with B and decided to make such election. However, because Taxpayer did not timely file its federal income tax return for the A taxable year, Taxpayer failed to make the election to apply § 168(k)(4) on that return.

#### RULING REQUESTED

Accordingly, Taxpayer requests an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the election to apply § 168(k)(4) for its taxable year ended Date1 and subsequent taxable years.

#### LAW AND ANALYSIS

Section 168(k), amended by §103 of the Economic Stimulus Act of 2008, Pub. L. No. 110-185, 122 Stat. 613 (February 13, 2008), and by § 1201(a)(1) of the American Recovery and Reinvestment Tax Act of 2009, Div. B of Pub. L. No. 111-5, 123 Stat. 115 (February 17, 2009), allows a 50-percent additional first year depreciation deduction (Stimulus additional first year depreciation deduction) for the taxable year in which

qualified property acquired by a taxpayer after 2007 is placed in service by the taxpayer before 2010 (before 2011 in the case of property described in § 168(k)(2)(B) or (C)).

Section 3081(a) of the Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654 (July 30, 2008) (Housing Act), amended § 168(k) by adding § 168(k)(4). Section 168(k)(4)(A) provides that a corporation may elect to apply § 168(k)(4) (the § 168(k)(4) election). If the corporation makes the § 168(k)(4) election, § 168(k)(4)(A) further provides that for the corporation's first taxable year ending after March 31, 2008, and for each subsequent taxable year, the corporation must not claim the Stimulus additional first year depreciation deduction for all eligible qualified property, must use the straight line method of depreciation as the applicable depreciation method for all eligible qualified property, and must increase its business credit limitation under § 38(c) and the alternative minimum tax (AMT) credit limitation under § 53(c) by the bonus depreciation amount (as defined in § 168(k)(4)(C) and as determined under section 5 of Rev. Proc. 2008-65, 2008-44 I.R.B. 1082) that is determined for that taxable year and allocated to such limitation. Specifically, § 168(k)(4)(E)(iii) and (iv) provides, in general, that the corporation will be able to claim unused credits from taxable years beginning before January 1, 2006, that are allocable to research expenditures or AMT liabilities.

Section 4.01 of Rev. Proc. 2008-65 provides that, except as provided in § 3081(b) of the Housing Act (relating to certain automotive partnerships), only a corporation may elect to apply § 168(k)(4). If the election to apply § 168(k)(4) is made, the election applies to all eligible qualified property placed in service by the taxpayer in the taxpayer's first taxable year ending after March 31, 2008, and in any subsequent taxable year.

Section 3.01 of Rev. Proc. 2009-16, 2009-6 I.R.B. 449, provides that a corporate taxpayer must make the § 168(k)(4) election by the due date (including extensions) of the federal income tax return for the taxpayer's first taxable year ending after March 31, 2008. Even if the taxpayer does not place in service any eligible qualified property during its taxable year ending after March 31, 2008, the taxpayer must make the § 168(k)(4) election for that taxable year if the taxpayer wishes to apply the election to eligible qualified property placed in service in subsequent taxable years.

If a taxpayer is not a member of a controlled group, section 3.04 of Rev. Proc. 2009-16 provides the manner for making the § 168(k)(4) election for taxpayers whose first taxable year ending after March 31, 2008, ends on or after December 31, 2008. Specifically, a C corporation makes the § 168(k)(4) election by: (a) claiming the refundable credit on line 32g of the 2008 Form 1120; (b) filing the 2008 Form 3800 or Form 8827, or both, as applicable. Taxpayers should refer to the applicable instructions to the 2008 Forms 3800 and 8827 for guidance regarding computation of the refundable credit and allocation of the bonus depreciation amount between the business credit limitation and AMT credit limitation; (c) filing the 2008 Form 4562, "Depreciation and Amortization," indicating that the taxpayer used the straight line method and did not

claim the Stimulus additional first year depreciation deduction for all eligible qualified property; and (d) notifying any partnership in which the C corporation is a partner, in accordance with section 5.02 of Rev. Proc. 2009-16. Section 3.04(1) of Rev. Proc. 2009-16.

Under § 301.9100-1 of the Procedure and Administration Regulations, 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 apply § 168(k)(4) for the taxable year ended Date1 and subsequent taxable years. This election must be made by Taxpayer filing an amended federal income tax return for the taxable year ended Date1 that is in accordance with the procedures provided in section 3.04(1) of Rev. Proc. 2009-16.

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 A taxable year is eligible for the additional first year depreciation deduction under § 168(k) or is eligible qualified property for purposes of § 168(k)(4). Further, this letter ruling does not grant an extension of time for filing Taxpayer's federal income tax return for the taxable year ended Date1.

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

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

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