

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201039015**
Release Date: 10/1/2010
Index Number: 9100.22-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:ITA:7
PLR-115949-10
Date:
June 23, 2010

Re

Taxpayer =
A =
B =
C =
Date1 =
SB/SE Official =

Dear :

This letter responds to a letter dated March 30, 2010, and supplemental correspondence, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the election not to deduct the Gulf Opportunity (GO) Zone additional first year depreciation under § 1400N(d) of the Internal Revenue Code for all classes of qualified Gulf Opportunity Zone property (GO Zone property) placed in service in the taxable year ended Date1 (the C taxable year).

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer, a partnership, owns and operates

through its wholly owned LLC, A. A is wholly owned by Taxpayer and is treated as a disregarded entity.

Taxpayer timely filed its federal income tax return for the taxable year ended Date1. On this return, Taxpayer did not deduct the GO Zone additional first year depreciation deduction provided by § 1400N(d) for all qualified GO Zone property placed in service during the C taxable year. However, Taxpayer inadvertently failed to attach the statement to elect not to deduct the GO Zone additional first year

depreciation. Taxpayer's return for the C taxable year was prepared by its tax return preparer, B, who did not advise Taxpayer of the need to attach such statement to its return. During the C taxable year, Taxpayer placed in service the following classes of qualified GO Zone property: 5-year property, 7-year property, computer software as defined by § 167(f)(1)(B), and nonresidential real property.

RULING REQUESTED

Accordingly, 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 GO Zone additional first year depreciation under § 1400N(d) for all classes of property that is placed in service in the taxable year ended Date1 (the C taxable year) and that qualifies for the GO Zone additional first year depreciation.

LAW AND ANALYSIS

Section 1400N(d)(1) provides a 50-percent additional first year depreciation deduction for the taxable year in which qualified GO Zone property is placed in service by a taxpayer.

Section 1400N(d)(2)(B)(iv) provides that a taxpayer may elect not to deduct the GO Zone additional first year depreciation for any class of property placed in service during the taxable year. See also § 4.01 of Notice 2006-77, 2006-40 I.R.B. 590. The term "class of property" is defined in § 4.02 of Notice 2006-77 as meaning: each class of property described in § 168(e) (for example, 5-year property); water utility property as defined in § 168(e)(5) and depreciated under § 168; computer software as defined in, and depreciated under, § 167(f)(1) and the regulations thereunder; qualified leasehold improvement property as defined in § 168(k)(3) and § 1.168(k)-1(c) of the Income Tax Regulations and depreciated under § 168; nonresidential real property as defined in § 168(e)(2)(B) and depreciated under § 168; or residential rental property as defined in § 168(e)(2)(A) and depreciated under § 168.

Section 4.03 of Notice 2006-77 provides, in part, that the election not to deduct GO Zone 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 GO Zone property is placed in service by the taxpayer. The election must be made in the manner prescribed on Form 4562, "Depreciation and Amortization," and its instructions. The instructions to Form 4562 for the C taxable year provided that the election not to deduct the GO Zone 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 GO Zone 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 GO Zone additional first year depreciation under § 1400N(d) for all property that is placed in service by Taxpayer in the taxable year ended Date1 and that qualifies for the GO Zone additional first year depreciation. This election must be made by Taxpayer filing an amended federal tax return for the taxable year ended Date1, with a statement indicating that Taxpayer is electing not to deduct the GO Zone additional first year depreciation for all property placed in service in 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 in the taxable year ended Date1, is eligible for the GO Zone additional first year depreciation deduction.

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 SB/SE 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