

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

Refer Reply To:
CC:ITA:B07
PLR-118776-10
Date:
October 28, 2010

Re:

Legend

Taxpayer =

Date 1 =

Date 2 =

Date 3 =

A =

B =

Dear _____ :

This letter responds to a letter dated April 22, 2010, 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 C corporation and has a calendar year end. For the taxable year ended Date 1 (the A taxable year), Taxpayer was the common parent of one subsidiary and filed a consolidated federal income tax return with this subsidiary. However, this subsidiary was sold before Date 1, during the A taxable year. Taxpayer is engaged in the information technology industry. Since inception in B, Taxpayer has generated significant net operating losses and general business credit carryforwards.

Taxpayer placed in service qualified property (as defined in § 168(k)(2) before the application of § 168(k)(2)(D)(iii)) during the A taxable year. However, on its consolidated federal income tax return for the A taxable year, Taxpayer made an election under § 168(k)(2)(D)(iii) not to deduct the Stimulus additional first year depreciation deduction for all eligible classes of property placed in service during the A taxable year. In a separate letter ruling dated today, Taxpayer is granted consent to revoke such election within 60 calendar days from the date of the letter ruling. If Taxpayer revokes such election, Taxpayer placed in service eligible qualified property during the A taxable year.

Taxpayer also has unused alternative minimum tax (AMT) credit and research tax credits from taxable years beginning before January 1, 2006. Taxpayer was not a partner in any partnership during the A taxable year. Further, Taxpayer's consolidated group was not a member of any other controlled group (as defined in section 2.05 of Rev. Proc. 2009-16, 2009-6 I.R.B. 449) on Date 1.

For the A taxable year, Taxpayer relied upon an outside tax preparer to prepare its consolidated federal income tax return. This return was timely filed on Date 2. This return did not include an election to apply § 168(k)(4). In Date 3, after the A consolidated federal income tax return was filed, the issue was brought to Taxpayer's attention.

RULING REQUESTED

Taxpayer requests an extension of time under the rules of § 301.9100-3 of the Procedure and Administration Regulations to make the election to apply § 168(k)(4) for the taxable year ended Date 1 and subsequent 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), 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), and by § 2022(a) of the Small Business Jobs Act of 2010, Pub. L. No. 111-240, 124 Stat. 2504 (September 27, 2010) (Jobs Act), 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 2011 (before 2012 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 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. However, the Jobs Act did not extend § 168(k)(4) to qualified property (as defined in § 168(k)(2)) placed in service after 2009 (2010 in the case of property described in § 168(k)(2)(B) or (C)).

Although Taxpayer filed a consolidated federal income tax return with its one subsidiary for the A taxable year, this subsidiary was sold before Date 1, during the A taxable year. Further, Taxpayer's consolidated group for the A taxable year was not a member of any other controlled group. Accordingly, on December 31, 2008 (the testing date for determining the members of a controlled group for the first taxable year ending after March 31, 2008, for purposes of § 168(k)(4)(C)(iv)), Taxpayer is not a member of any controlled group for purposes of § 168(k)(4). See § 168(k)(4)(C)(iv) and sections 2.05 and 3.05(1)(a) of Rev. Proc. 2009-16.

Section 3.01 of Rev. Proc. 2009-16 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.

Section 3.04 of Rev. Proc. 2009-16 provides the manner for making the § 168(k)(4) election for a taxpayer 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 consolidated federal tax return for the taxable year ended Date 1, and in accordance with the procedures provided in section 3.04(1) of Rev. Proc. 2009-16.

Except as specifically set forth above, no opinion is expressed or implied concerning the 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 by Taxpayer in the A taxable year is eligible for the Stimulus additional first year depreciation deduction under § 168(k) or is eligible qualified property for purposes of § 168(k)(4).

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

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