**Internal Revenue Service**

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:ITA:7
PLR-128167-10

Date:
November 08, 2010

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

| | |
|---|---|
| Taxpayer | = |
| A | = |
| B | = |
| C | = |
| D | = |
| E | = |
| Date1 | = |
| Date2 | = |
| Date3 | = |
| Date4 | = |
| LB&I Official | = |

Dear :

This letter responds to a letter dated June 30, 2010, and subsequent correspondence, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the elections not to deduct the additional first year depreciation under § 168(k) of the Internal Revenue Code for all classes of qualified property placed in service in the taxable years ended Date1, Date2, and Date3.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is a A corporation engaged in the business of acquiring and processing E for clients such as major oil and gas companies, independent oil and gas operators, and providers of multi-client data libraries. Taxpayer timely filed its federal income tax returns for the taxable years ended Date1, Date2, and Date3. On each of the federal

tax returns for the taxable years ended Date1, Date2, and Date3, Taxpayer did not claim the additional first year depreciation deduction for all classes of qualified property placed in service by Taxpayer during each of those taxable years. Taxpayer, however, inadvertently failed to attach the election statement not to claim the additional first year depreciation deduction for all classes of qualified property placed in service by Taxpayer for the taxable years ended Date1, Date2, and Date3. For the taxable years ended Date1 and Date2, Taxpayer's tax returns were prepared by B. For the taxable year ended Date3, Taxpayer's tax return was prepared by C.

While preparing its federal tax return for the taxable year ended Date4, Taxpayer discovered that it had failed to attach the election statement to the federal tax returns for the taxable years ended Date1, Date2, and Date3 with respect to all classes of qualified property. Thereafter, Taxpayer contacted D for advice to correct these mistakes.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the elections not to deduct the additional first year depreciation under § 168(k) for all classes of qualified property placed in service by Taxpayer in the taxable years ended Date1, Date2, and Date3.

LAW AND ANALYSIS

Section 168(k)(1) (as in effect on the day before the date of the enactment of the Economic Stimulus Act of 2008, Pub. L. No. 110-185, 122 Stat. 613 (February 13, 2008)) provides a 30-percent additional first year depreciation deduction for the taxable year in which qualified property acquired after September 10, 2001, and before January 1, 2005, and placed in service before January 1, 2005, is placed in service by taxpayer. Section 168(k)(4) (as in effect on the day before the date of the enactment of the Economic Stimulus Act of 2008 and of the Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654 (July 30, 2008)) provides a 50-percent additional first year depreciation deduction for the taxable year in which 50-percent bonus depreciation property acquired after May 5, 2003, and placed in service before January 1, 2005, is placed in service by a taxpayer. Section 103 of the Economic Stimulus Act of 2008 amended section 168(k) to allow a 50-percent additional first year depreciation deduction for qualified property acquired and placed in service during 2008. See sections 168(k)(2), 168(k)(4) (as in effect on the day before the date of the enactment of the Economic Stimulus Act of 2008 and of the Housing and Economic Recovery Act of 2008), and 1.168(k)-1 for the definitions of qualified property and 50-percent bonus depreciation property.

Section 168(k)(2)(D)(iii) provides that a taxpayer may elect not to deduct the 50-percent additional first year depreciation for any class of property placed in service during the taxable year. Section 168(k)(2)(D)(iii) (as in effect on the day before the date

of the enactment of the Economic Stimulus Act of 2008 and of the Housing and Economic Recovery Act of 2008) provided 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). See section 5.01 of Rev. Proc. 2008-54, 2008-38 I.R.B. 722 (rules similar to the rules in § 1.168(k)-1 for "qualified property" or for "30-percent additional first year depreciation deduction" apply for purposes of § 168(k) as currently in effect).

Section 168(k)(4)(E) (as in effect on the day before the date of the enactment of the Economic Stimulus Act of 2008 and of the Housing and Economic Recovery Act of 2008) 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 taxable year ended Date1, Date2, and Date3 provide 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.

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 elections not to deduct the additional first year depreciation under § 168(k) for all classes of property placed in service by Taxpayer during the taxable years ended Date1, Date2, and Date3 that qualify for the additional first year depreciation. For the taxable years closed by the period of limitations on assessment under § 6501(a), this election must be made by Taxpayer filing a statement indicating that Taxpayer is making the election not to deduct the additional first year depreciation under § 168(k) for all classes of qualified property placed in service during such taxable years, along with a copy of this letter ruling, with the IRS Service Center(s) where Taxpayer filed its original federal tax returns for such taxable years. For the open taxable year, this election must be made by Taxpayer filing an amended federal tax return for that taxable year, with a statement indicating that Taxpayer is electing not to deduct the additional first year depreciation for all classes of property placed in service by Taxpayer during that taxable year. A copy of this letter ruling should be attached to the amended return.

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 by Taxpayer during the taxable years ended Date1, Date2, and Date3 is eligible for the additional first year depreciation deduction.

In accordance with the power of attorney, we are sending a copy of this letter to Taxpayer's authorized representative. We are also sending a copy of this letter to the appropriate LB&I 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,

Willie E. Armstrong, Jr.

Willie E. Armstrong, Jr.
Senior Technician Reviewer, Branch 7
Office of Associate Chief Counsel
(Income Tax and Accounting)

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