Internal Revenue Service

Number: **201136019**
Release Date: 9/9/2011

Index Number: 9100.04-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:ITA:7
PLR-152456-10
Date:
June 03, 2011

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

Taxpayer =

LLC 1 =

LLC 2 =

C =

Year X =
SB/SE =
Official

Dear :

This letter responds to a letter dated December 17, 2010, submitted by Taxpayer on behalf of LLC 1 and LLC 2, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the election not to deduct the additional first year depreciation under § 168(k) of the Internal Revenue Code (Code) for all classes of qualified property placed in service in taxable year Year X.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is the common parent of an affiliated group of corporations that files a consolidated return for federal income tax purposes. Taxpayer is the single member owner of LLC 1. LLC 1 is the single member owner of LLC 2. LLC 1 and LLC 2 are each disregarded as an entity separate from Taxpayer for federal income tax purposes. Taxpayer's business operates as a C.

For taxable year Year X, Taxpayer timely filed Form 1120, U.S. Corporation Income Tax Return, for its affiliated group. On the return, Taxpayer did not claim the additional first year depreciation deduction for all classes of qualified property placed in service during taxable year Year X. Taxpayer, however, inadvertently failed to attach to the return the election statement not to claim the additional first year deduction for all classes of qualified property placed in service for taxable year Year X. Subsequent to filing its Year X federal tax return, Taxpayer discovered that it had failed to attach the election statement to the return for the Year X taxable year with respect to all classes of qualified property placed in service for that taxable year.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to § 301.9100-3 to make the election not to deduct the additional first year depreciation under § 168(k) for all classes of qualified property placed in service in taxable year Year X.

LAW AND ANALYSIS

Section 168(k)(1) provides a 50-percent additional first year depreciation deduction for qualified property placed in service in taxable year Year X.

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. 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 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 Year X provided 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 election not to deduct the additional first year depreciation under § 168(k) for all classes of property placed in service during the Year X taxable year that qualify for additional first year depreciation. 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 during 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 during the Year X taxable year 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 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,

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