Internal Revenue Service

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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:B06
PLR-139436-11
Date:
February 28, 2012

In re:

Taxpayer =

A =

B =

C =

Date 1 =

Date 2 =

Dear :

This letter responds to a letter dated September 21, 2011, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations for Taxpayer to make the election not to deduct the 50-percent additional first year depreciation under § 168(k)(1) of the Internal Revenue Code for certain classes of qualified property placed in service in the taxable year ended Date 1 (the C taxable year).

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer, a limited partnership that is owned by A and B, timely filed Form 1065, U.S. Return of Partnership Income, for the C taxable year on Date 2. On this return, Taxpayer did not claim the 50-percent additional first year depreciation deduction for all 5-year, 7-year, and 15-year property that are qualified property and placed in service by Taxpayer during the C taxable year. Taxpayer, however, inadvertently failed to attach to its federal tax return for the C taxable year the election statement not to claim the 50-percent additional first year depreciation deduction for such qualified property. The accounting firm that was retained by Taxpayer to prepare its federal partnership tax return for the C taxable year failed to inform Taxpayer of the election statement.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to § 301.9100-3 to make the election not to deduct the 50-percent additional first year depreciation under § 168(k)(1) for all 5-year, 7-year, and 15-year property that are qualified property and placed in service by Taxpayer in the C taxable year.

LAW AND ANALYSIS

Section 168(k)(1) (as in effect on the day before the enactment of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (February 17, 2009)) provides a 50-percent additional first year depreciation deduction for qualified property (as defined in § 168(k)(2)) acquired after December 31, 2007, and placed in service before January 1, 2009.

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 (stating rules similar to 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 C taxable year 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 50-percent additional first year depreciation under § 168(k)(1) for all 5-year, 7-year, and 15-year property placed in service by Taxpayer during the C taxable year that qualify for the 50-percent additional first year depreciation. This election must be made by Taxpayer filing an amended federal partnership tax return for the C taxable year, with a statement indicating that Taxpayer is electing not to deduct the 50-percent additional first year depreciation for all 5-year, 7-year, and 15-year property placed in service by Taxpayer during that taxable year.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the facts described above under any other provisions of the Code (including other subsections of § 168). Specifically, no opinion is expressed or implied on whether any item of depreciable property placed in service by Taxpayer during the C 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 operating division director.

This letter 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 yours,

Kathleen Reed

Kathleen Reed
Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax & Accounting)

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