

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Date:  
May 14, 2012

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

Legend

Taxpayer =

Date 1 =

A =

Dear :

This letter responds to a letter dated December 27, 2011, submitted by Taxpayer, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make an election not to deduct the 50-percent and 100-percent additional first year depreciation under § 168(k) of the Internal Revenue Code for all classes of qualified property placed in service by Taxpayer during the taxable year ending Date 1.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is a domestic partnership engaged in the energy industry. Taxpayer files Form 1065, U.S. Return of Partnership Income, on a calendar-year basis. Taxpayer's overall method of accounting is the accrual method.

Taxpayer owns A, a single-member limited liability company that is disregarded for federal income tax purposes. During the taxable year ending Date 1, A placed in service qualified property as defined in § 168(k)(2).

Taxpayer timely filed its Form 1065 for the taxable year ending Date 1. On the Form 1065, Taxpayer did not claim additional first year depreciation under § 168(k) with respect to any qualified property placed in service during the taxable year ending Date 1. However, Taxpayer inadvertently failed to attach to the Form 1065, as required by § 1.168(k)-1(e)(3)(ii) of the Income Tax Regulations, the election statement not to claim the additional first year deduction for all classes of qualified property placed in service for the taxable year ending Date 1. Subsequent to filing its Form 1065 for the taxable year ending Date 1, Taxpayer discovered that it had failed to attach the election statement 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 50-percent and 100-percent additional first year depreciation under § 168(k) for all classes of qualified property placed in service in the taxable year ending on Date 1.

#### LAW AND ANALYSIS

Section 168(k)(1), as 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), allows a 50-percent 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 168(k)(5), added by § 401(b) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, 124 Stat. 3296 (December 17, 2010), allows a 100-percent additional first year depreciation deduction for qualified property acquired by a taxpayer after September 8, 2010, and before January 1, 2012, and placed in service by the taxpayer before January 1, 2012 (before January 1, 2013, in the case of property described in § 168(k)(2)(B) and (C)).

Section 5.01 of Rev. Proc. 2008-54, 2008-2 C.B. 722, provides that for purposes of the “Stimulus additional first year depreciation deduction” (the 50-percent additional first year depreciation deduction), rules similar to the rules in § 1.168(k)(1) for “qualified property” or for “30 percent additional first year depreciation deduction” apply.

However, in applying § 1.168(k)-1(d)(1)(i), the computation of the allowable “Stimulus additional first year depreciation deduction” is made in accordance with the rules for 50-percent bonus depreciation property.

Section 3.01 of Rev. Proc. 2011-26, 2011-1 C.B. 664, provides that depreciable property is eligible for the 100-percent additional first year depreciation deduction if the property is qualified property (as defined in § 168(k)(2)) and also meets the additional requirements in section 3.02 of Rev. Proc. 2011-26. Further, for purposes of determining whether depreciable property is qualified property, rules similar to the rules in §1.168(k)-1 for “qualified property” or for “30-percent additional first year depreciation deduction” apply.

Section 168(k)(2)(D)(iii) provides that a taxpayer may elect not to deduct 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) as meaning, in general, each class of property described in § 168(e) (for example, 5-year property).

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 Date 1 provides 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 and 100-percent additional first year depreciation under § 168(k) for all classes of property placed in service during the taxable year ending Date 1 that qualify for additional first year depreciation. This election must be made by Taxpayer filing an amended federal partnership 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 taxable year ending Date 1 is eligible for the additional first year depreciation deduction.

This letter ruling is directed only to Taxpayer. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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

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

cc: