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Washington, DC 20224

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Refer Reply To:
CC:ITA:7
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Date:
May 17, 2012

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

Legend

Taxpayer =

Year 1 =
Year 2 =

Dear :

This letter responds to a letter dated February 10, 2012, and supplemental correspondence, 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 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 years Year 1 and Year 2.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is an S corporation that files Form 1120S, U.S. Income Tax Return for an S Corporation, on a calendar-year basis. Taxpayer's overall method of accounting is the accrual method.

Taxpayer's principal operations consist of the sale, leasing, and service of diesel engines and diesel engine powered generators, and also the sale of related parts, primarily to companies in the construction industry and customers in need of alternative power sources. In connection with its normal business operations, Taxpayer acquires

tangible personal property eligible for the additional first year depreciation deduction under § 168(k).

Taxpayer timely filed its Form 1120S for the taxable years Year 1 and Year 2. On these returns, Taxpayer did not claim the additional first year depreciation for all classes of qualified property placed in service by Taxpayer during the taxable years Year 1 and Year 2. However, Taxpayer inadvertently failed to attach to its Form 1120S for the taxable years Year 1 and Year 2 the election statement not to deduct the additional first year depreciation for all classes of qualified property placed in service during these taxable years. The accounting firm that was retained by Taxpayer to prepare its Form 1120S for the taxable years Year 1 and Year 2 failed to inform Taxpayer of the election statement. Subsequent to filing its Form 1120S for the taxable years at issue, Taxpayer's return preparer discovered that the election statement was not attached to Taxpayer's Form 1120S for such taxable years.

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 years Year 1 and Year 2.

LAW AND ANALYSIS

Section 168(k)(1) provides a 50-percent additional first year depreciation deduction for qualified property (i) acquired after December 31, 2007, and before September 9, 2010, or acquired generally after December 31, 2011, and (ii) placed in service before January 1, 2013 (or January 1, 2014, for qualified property described in § 168(k)(2)(B) or (C)).

Section 168(k)(5) provides a 100-percent additional first year deprecation deduction for qualified property acquired after September 8, 2010, and generally before January 1, 2012, and placed in service before January 1, 2012 (or January 1, 2013, for qualified property described in § 168(k)(2)(B) or (C)).

Section 168(k)(2)(D)(iii) provides that a taxpayer may elect not to deduct the 50-percent additional first year depreciation or the 100-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, 2008-2 C.B. 722 and section 3.01 of Rev. Proc. 2011-26, 2011-1 C.B. 664 (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 years Year 1 and Year 2 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 election not to deduct the additional first year depreciation under § 168(k) for all classes of property placed in service during taxable years Year 1 and Year 2 that qualify for the additional first year depreciation deduction. Taxpayer must make this election by filing amended federal tax returns for taxable years Year 1 and Year 2 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 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 Year 1 or Year 2 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 a copy of this letter to Taxpayer's authorized representative. We are also sending a copy of this letter to the appropriate Industry Director, LB&I.

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