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:7
PLR-137246-12

Date:
December 14, 2012

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

Taxpayer =
A =
B =

C =
D =
State =
Date1 =
Date2 =
LB&I Official =

Dear :

This letter responds to a letter dated August 28, 2012, and subsequent correspondence, submitted by Taxpayer 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)(5) of the Internal Revenue Code for all classes of qualified property placed in service in the taxable year ended Date1.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is a corporation organized under the laws of State and is the common parent of an affiliated group that files consolidated federal tax returns. Taxpayer is engaged in the business of operating as the marketing and licensing arm of the A. Taxpayer licenses other companies to manufacture and sell B. Taxpayer also markets and promotes A trademarks through its licensees, sponsors, and other business

partners. Taxpayer timely filed its consolidated federal tax return for the taxable year ended Date1, on or about Date2.

On this return, Taxpayer deducted the 100-percent additional first year depreciation for all classes of qualified property placed in service by Taxpayer in the taxable year ended Date1. Taxpayer took the additional first year depreciation deduction based on the advice of C, its Tax Director. In rendering his advice, C did not take into account certain state tax considerations. Specifically, Taxpayer is subject to the corporate franchise tax imposed under the laws of the State. State adopts federal taxable income as the starting point for determining State taxable income. Adjustments are then required to be made to arrive at State taxable income, including a disallowance of the deduction taken for additional first year depreciation. State allows a net operating loss deduction; however, the State net operating loss deduction for any particular year is limited to federal taxable income for that year. As a result of the State disallowance of additional first year depreciation and the limitation on the State net operating loss deduction, Taxpayer's State taxable income and corresponding franchise tax liability for the taxable year ended Date1, is higher than it would be had Taxpayer made the election not to deduct additional first year depreciation. The State law that disallows the additional first year depreciation in computing State taxable income and puts the limitation on the State operating loss deduction were enacted before the due date and before Taxpayer filed its consolidated federal tax return for the taxable year ended Date1.

Subsequent to filing its consolidated federal tax return for the taxable year ended Date1, Taxpayer discovered the effect of its failure to make the election not to deduct additional first year depreciation on Taxpayer's State franchise tax liability. Thereafter, Taxpayer contacted D for advice to correct this mistake.

RULING REQUESTED

Taxpayer requests 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)(5) for all classes of qualified property placed in service by Taxpayer in the taxable year ended Date1.

LAW AND ANALYSIS

Section 168(k)(5) provides a 100-percent additional first year depreciation deduction for the taxable year in which qualified property qualifying for the 100-percent additional first year depreciation is placed in service by a taxpayer.

Section 168(k)(2)(D)(iii) provides that a taxpayer may elect not to deduct the 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)(1) provides that the election not to deduct additional first year depreciation for a class of property applies to all qualified property that is in that class of property and placed in service in the same taxable year. See section 4.01 of Rev. Proc. 2011-26, 2011-16 I.R.B. 664.

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 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)(5) for all classes of

property placed in service by Taxpayer during the taxable year ended Date1 that qualify for the 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 by Taxpayer 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 by Taxpayer during the taxable year ended Date1 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,

Patrick Clinton

Patrick Clinton
Assistant to the Branch Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax and Accounting)

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