Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:

ID No.

Telephone Number:

Refer Reply To:
CC:ITA:7
PLR-129399-12

Date:
December 20, 2012

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

Taxpayer =
A =
B =
C =
D =
E =
F =
G =
Date 1 =
Date 2 =
Date 3 =

Dear :

This letter responds to a letter dated July 2, 2012, 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 for certain classes of qualified property placed in service by Taxpayer in the taxable years ended Date 1 (the A taxable year), and Date 2 (the B taxable year).

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer, a corporation, is an independent local exchange carrier, providing communication services to customers throughout the State of C. Taxpayer also provides long distance, internet, cellular telephone, and fiber-optic based facilities services through its wholly-owned subsidiaries. Taxpayer is a member of an affiliated

group of corporations that files a consolidated federal income tax return, consisting of Taxpayer as the common parent and three subsidiaries: D; E; and F.

Taxpayer prepares its consolidated federal income tax return each year and submits a draft of such return, along with depreciation schedules, other supporting schedules, and other documentation, to G, a certified public accounting firm, licensed in the State of C. G reviews the consolidated federal income tax return and, after a final review by Taxpayer, G electronically files Taxpayer's consolidated federal income tax return.

Taxpayer timely filed consolidated Forms 1120, U.S. Corporation Income Tax Return, for the taxable year ended Date 1, and for the taxable year ended Date 2. On each of these returns, Taxpayer did not claim the additional first year depreciation deduction for all classes of qualified property, other than 7-year property, placed in service by Taxpayer during the A and B taxable years. However, G inadvertently failed to attach the election statements not to deduct the additional first year depreciation for such property to the electronically filed consolidated federal income tax returns for the A and B taxable years.

While the period of limitations on assessment under § 6501(a) for the taxable year ended Date 1, expired prior to the date of this letter ruling, the Internal Revenue Service and Taxpayer agreed to extend the period of limitations on assessment for the taxable year ended Date 1, until Date 3.

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) for all classes of qualified property, other than 7-year property, placed in service by Taxpayer in the taxable years ended Date 1 and Date 2.

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), and 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), allows a 50-percent additional first year depreciation deduction for qualified property acquired by a taxpayer after December 31, 2007, and placed in service by the taxpayer before January 1, 2010 (before January 1, 2011, in the case of 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 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 taxable years ended Date 1, and Date 2, 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 of Internal Revenue 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.

Section 301.9100-3(c)(1)(ii) provides, in part, that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made, or any taxable years that would have been affected by the election had it been timely made, are closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting § 301.9100-3 relief.

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, other than 7-year property, placed in service by Taxpayer during the taxable years ended Date 1, and Date 2, that qualify for the additional first year depreciation. Taxpayer must make this election by filing an amended consolidated federal income tax return for each such taxable year, with a statement indicating that Taxpayer is electing not to deduct the additional first year depreciation for all classes of property, other than 7-year 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 years ended Date 1, and Date 2, is eligible for the additional first year depreciation deduction.

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 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,

Kathleen Reed

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

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