

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.

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Refer Reply To:
CC:ITA:7
PLR-105874-13
Date:
July 03, 2013

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

Legend

P =

S1 =

S2 =

S3 =

S4 =

S5 =

S6 =

S7 =

S8 =

S9 =

S10 =

S11 =

S12 =

S13 =

Year1 =

Year2 =

Date1 =

Date2 =

Dear :

This letter responds to a letter dated February 6, 2013, and supplemental correspondence, submitted by P on behalf of itself and S1, S2, S3, S4, S5, S6, S7, S8, S9, S10, S11, S12, and S13 (hereinafter P, S1, S2, S3, S4, S5, S6, S7, S8, S9, S10, S11, S12, and S13 will be collectively referred to as Taxpayer) requesting an extension of time pursuant to section 301.9100-3 of the Procedure and Administration Regulations to make the election not to deduct the additional first year depreciation deduction under section 168(k)(1) and (k)(5) of the Internal Revenue Code for all classes of qualified property placed in service by Taxpayer during the taxable years ended Date 1 (the Year1 taxable year), and Date2 (the Year2 taxable year).

FACTS

P represents that the facts are as follows:

P is the domestic parent of an affiliated group of corporations that includes S1, S2, S3, S4, S5, S6, S7, S8, S9, S10, S11, S12, and S13. The affiliated group of corporations files consolidated federal income tax returns on a calendar-year basis.

Taxpayer is a global power company that owns a portfolio of electricity generation and distribution businesses. Taxpayer owns and/or operates power plants to (1) generate and sell power to wholesale customers such as utilities and other intermediaries, and (2) generate, distribute, transmit, and sell electricity to end-user customers in the residential, commercial, industrial, and governmental sectors within a defined service area.

Taxpayer placed in service qualified property (as defined in section 168(k)(2)) during the taxable years ended Date1, and Date2.

On P's timely filed Year1 and Year2 consolidated federal income tax returns, Taxpayer did not claim the additional first year depreciation deduction under section 168(k)(1) or (k)(5) for all classes of qualified property placed in service during Year1 or Year2. However, Taxpayer inadvertently failed to attach the election statement not to deduct the additional first year depreciation for such property to the Year1 and Year2 consolidated federal income tax returns.

Taxpayer did not make the election under section 168(k)(4) to accelerate alternative minimum tax credits in lieu of the additional first year depreciation deduction with respect to its extension property as defined in section 168(k)(4)(H)(iii) or its round two extension property as defined in section 168(k)(4)(I)(iv).

RULING REQUESTED

Taxpayer requests an extension of time pursuant to section 301.9100-3 to make the election not to deduct the additional first year depreciation deduction under section 168(k)(1) and (k)(5) for all classes of qualified property placed in service by Taxpayer during the Year1 and Year2 taxable years.

LAW AND ANALYSIS

Section 168(k)(1) allows a 50-percent additional first year depreciation deduction in the placed-in-service year for qualified property acquired by a taxpayer after December 31, 2007, and before September 9, 2010, or acquired by a taxpayer generally after December 31, 2011, and placed in service by the taxpayer generally before January 1, 2014.

Section 168(k)(5) provides a 100-percent additional first year depreciation deduction in the placed-in-service year for qualified property acquired by a taxpayer after September 8, 2010, and generally before January 1, 2012, and placed in service by the taxpayer after September 8, 2010, and generally before January 1, 2012. See section 3 of Rev. Proc. 2011-26, 2011-16 I.R.B. 664, 665.

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 section 1.168(k)-1(e)(2) of the Income Tax Regulations as meaning, in general, each class of property described in section 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, 2011-16 I.R.B. at 665 (rules similar to the rules in section 1.168(k)-1 for "qualified property" or for "30-percent additional first year depreciation deduction" apply for purposes of section 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 Date1, and Date2, 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 section 301.9100-1, the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in sections 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 section 301.9100-2.

Section 301.9100-3(a) provides that requests for relief under section 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 sections 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 section 168(k)(1) and (k)(5) for all classes of property placed in service by Taxpayer during the taxable years ended Date1, and Date2, that qualify for the additional first year depreciation deduction. This election must be made by P filing an amended consolidated federal tax 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 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 section 168). Specifically, no opinion is expressed or implied on whether any item of depreciable property placed in service by

Taxpayer during the taxable years ended Date1, and Date 2, is eligible for the additional first year depreciation deduction.

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.

In accordance with the power of attorney, we are sending a copy of this letter to Taxpayer's authorized representatives. We are also sending a copy of this letter to the appropriate operating division director.

Sincerely,

Kathleen Reed

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