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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-123944-13

Date:
November 19, 2013

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

Legend

P =
S1 =
S2 =
S3 =
Date1 =
Date2 =
Date3 =

Dear :

This letter responds to a letter dated April 24, 2013, and supplemental correspondence, submitted by P on behalf of S1, S2, and S3 (hereinafter S1, S2, and S3 will be collectively referred to as Taxpayer) requesting an extension of time pursuant to §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to make the election under § 168(k)(2)(D)(iii) of the Internal Revenue Code not to deduct the additional first year depreciation deduction under § 168(k)(1) and (k)(5) for all classes of qualified property placed in service in taxable years ended Date1, Date2, and Date3.

FACTS

Taxpayer represents that the facts are as follows:

P is the parent of an affiliated group of corporations that includes S1, S2, and S3. The affiliated group of corporations files consolidated federal income tax returns on a fiscal-year basis.

Taxpayer is a modular buildings supplier who provides mobiles offices, site trailers, storage containers, and modular buildings for temporary and permanent applications in North America.

Taxpayer placed in service qualified property (as defined in § 168(k)(2)) during its taxable years ended Date1, Date2, and Date3.

On P's timely filed consolidated federal income tax returns for its taxable years ended Date1, Date2, and Date3, Taxpayer did not claim the additional first year depreciation deduction under § 168(k)(1) or (k)(5) with respect to any qualified property placed in service during each of these taxable years. However, Taxpayer inadvertently failed to attach the election statement not to deduct the additional first year depreciation for such property to the consolidated federal income tax returns for its taxable years ended Date1, Date2, and Date3. Furthermore, the period of limitation on assessment under § 6501(a) has expired for the taxable years ended Date1 and Date2. Taxpayer has disposed of qualified property placed in service in taxable years ending Date1 and Date2, and some of the dispositions occurred in a taxable year for which the period of limitation on assessment under § 6501(a) has expired. However, Taxpayer represents that the adjusted basis of the disposed property reflected the reduction in basis for the greater of the depreciation allowed or allowable as if the election had been timely made by Taxpayer.

Taxpayer did not make the election under § 168(k)(4) to accelerate alternative minimum tax credits (and, if applicable, research credits) in lieu of the additional first year depreciation deduction for any class of property placed in service by Taxpayer's taxable years ending Date1, Date2 or Date3.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to §§ 301.9100-1 through 301.9100-3 to make an election not to deduct the additional first year depreciation deduction under § 168(k)(1) for all classes of qualified property placed in service by Taxpayer in taxable years ended Date1, Date2, and Date3.

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 § 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, 2011-16 I.R.B. at 665 (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 ended Date1, Date2, and Date3, 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 §§ 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 relevant 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 relief under this section.

CONCLUSION

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)(1) and (k)(5) for all classes of property placed in service by Taxpayer during the taxable years ended Date1, Date2, and Date3, that qualify for the additional first year depreciation deduction. For the taxable years closed by the period of limitations on assessment under § 6501(a), the adjusted basis of the property as of the beginning of the first open year must reflect the reduction in basis for the greater of the depreciation allowed or allowable in the closed year(s) had the election been made timely by the taxpayer.

For the taxable years closed by the period of limitations on assessment under § 6501(a), this election must be made by P filing a statement indicating that Taxpayer is electing not to deduct the additional first year depreciation for all classes of property placed in service during the taxable years ended Date1, and Date2, along with a copy of this letter ruling, with the IRS Service Center(s) where Taxpayer filed its original federal tax returns for such taxable years. For the open taxable year, this election must be made by P filing an amended consolidated federal tax income tax return for 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 § 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, Date2, and Date3, 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,

Karla M. Meola

KARLA M. MEOLA
Assistant to the Branch Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax and Accounting)

Enclosures (2):
Copy of this letter
Copy for § 6110 purposes