

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:B07
PLR-146964-13

Date:
May 09, 2014

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

Legend

P =

S1 =

S2 =

S3 =

S4 =

S5 =

S6 =

S7 =

S8 =

Date 1 =

Dear :

This letter responds to a letter dated November 7, 2013, and supplemental correspondence, submitted by P on behalf of itself and S1, S2, S3, S4, S5, S6, S7, and S8 (hereinafter P, S1, S2, S3, S4, S5, S6, S7, and S8 will be referred to collectively as "Taxpayer") requesting an extension of time pursuant to section 301.9100-3 of the Procedure and Administration Regulations to make an election not to deduct additional first year depreciation under section 168(k) of the Internal Revenue Code for all classes of qualified property placed in service by Taxpayer in the taxable year ended Date 1.

FACTS

Taxpayer represents the facts as follows:

P is an S corporation and is the common parent of an affiliated group of Qualified Subchapter S Subsidiaries that includes S1, S2, S3, S4, S5, S6, S7, and S8. Taxpayer is engaged in the trade or business of manufacturing and selling loading dock equipment and industrial door safety products. Taxpayer's principal business activity code is 333200.

Taxpayer timely filed its Form 1120S, U.S. Income Tax Return for an S corporation, for the taxable year ended on Date 1. Taxpayer did not claim the additional first year depreciation deduction under section 168(k) for all classes of qualified property placed in service during the taxable year ended on Date 1.

However, Taxpayer inadvertently failed to attach the election statement not to claim the additional first year depreciation deduction for such property to its Form 1120S for the taxable year ended on Date 1, as required by section 1.168(k)-1(e)(3)(ii) of the Income Tax Regulations.

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) for all classes of qualified property placed in service by Taxpayer during the taxable year ended on Date 1.

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 after December 31, 2011 (after December 31, 2012, in the case of qualified property described in section 168(k)(2)(B) or (C)), and placed in service by the taxpayer before January 1, 2014 (before January 1, 2015, in the case of qualified property described in section 168(k)(2)(B) or (C)).

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 before January 1, 2012 (before January 1, 2013, in the case of qualified property described in section 168(k)(2)(B) or (C)), and placed in service by the taxpayer after September 8, 2010, and before January 1, 2012 (before January 1, 2013, in the case of qualified property described in section 168(k)(2)(B) or (C)). 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) 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 year ended on 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 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) for all classes of property placed in service by Taxpayer, during the taxable years ended on Date 1, that qualify for the additional first year depreciation deduction. This election must be made by P filing an amended Form 1120S for the taxable year ended on Date 1, 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 expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed in this letter 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 year ended Date 1, is eligible for the additional first year depreciation deduction.

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.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Kathleen Reed

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

Enclosures (2):

Copy of this letter
Copy for 6110 purposes