

Internal Revenue Service

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Person To Contact:
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Telephone Number:

Refer Reply To:
CC:ITA:7
PLR-100605-14

Date:
May 22, 2014

Re: Request for Extension of Time to Make the Election Provided in Section 3.02(2)(b)
of Rev. Proc. 2011-26

P =
S1 =
S2 =
S3 =
S4 =
S5 =
A =
Year1 =
Year2 =
Date1 =
Date2 =
Date3 =
Date4 =

Dear :

This letter responds to a letter dated December 26, 2013, submitted by P on behalf of itself and S1, S2, S3, S4, and S5 requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the election provided in section 3.02(2)(b) of Rev. Proc. 2011-26, 2011-16 I.R.B. 664, to deduct the 100-percent additional first year depreciation for components of a larger self-constructed property placed in service by P, S1, and S5 in the taxable year ended Year1, and placed in service by P, S1, S2, S3, S4, and S5 in the taxable year ended Year2.

FACTS

P represents that the facts are as follows:

P, S1, S2, S3, S4, and S5 are members of an affiliated group of corporations that is headed by P and files consolidated federal income tax returns. P is an producer with major production activities in the A. S1, S2, S3, and S4 operate that serve several of P's plants. S5 manufactures and related products used in the industry as well as other industries.

P timely filed the consolidated federal income tax return for the taxable year ended Year1, on Date1. P timely filed a superseding consolidated federal income tax return for the taxable year ended Year1, on Date2. On these tax returns that were prepared by P, P, S1, and S5 claimed the 100-percent additional first year depreciation deduction under section 168(k)(5) of the Internal Revenue Code for components that are eligible under the limited election provided in section 3.02(2)(b) of Rev. Proc. 2011-26 and placed in service by P, S1 and S5 during the taxable year ended Year1. P, S1, and S5, however, inadvertently failed to attach the election statement to the consolidated federal income tax return for the taxable year ended Year1.

P timely filed the consolidated federal income tax return for the taxable year ended Year2, on Date3. P filed an amended consolidated federal income tax return for the taxable year ended Year2, on Date4. On these tax returns that were prepared by P, P, S1, S2, S3, S4, and S5 claimed the 100-percent additional first year depreciation deduction under section 168(k)(5) for components that are eligible under the limited election provided in section 3.02(2)(b) of Rev. Proc. 2011-26 and placed in service by P, S1, S2, S3, S4, and S5 during the taxable year ended Year2. P, S1, S2, S3, S4, and S5, however, inadvertently failed to attach the election statement to the consolidated federal income tax return for the taxable year ended Year2.

RULINGS REQUESTED

(1) P, S1, and S5 request an extension of time pursuant to section 301.9100-3 of the Procedure and Administration Regulations to make the election provided in section 3.02(2)(b) of Rev. Proc. 2011-26 to deduct the 100-percent additional first year depreciation for components of a larger self-constructed property that are eligible for that election and placed in service in the taxable year ended Year1, for purposes of section 168(k)(5) and section 3.02(1)(a) of Rev. Proc. 2011-26.

(2) P, S1, S2, S3, S4, and S5 request an extension of time pursuant to section 301.9100-3 of the Procedure and Administration Regulations to make the election provided in section 3.02(2)(b) of Rev. Proc. 2011-26 to deduct the 100-percent additional first year depreciation for components of a larger self-constructed property that are eligible for that election and placed in service in the taxable year ended Year2, for purposes of section 168(k)(5) and section 3.02(1)(a) of Rev. Proc. 2011-26.

LAW AND ANALYSIS

Section 168(k)(5) provides that in the case of qualified property acquired by the taxpayer (under rules similar to the rules of section 168(k)(2)(A)(ii) and (iii)) after September 8, 2010, and before January 1, 2012, and which is placed in service by the taxpayer before January 1, 2012 (January 1, 2013, in the case of property described in section 168(k)(2)(B) or (C)), a 100-percent additional first year depreciation deduction for the taxable year in which such qualified property is placed in service by the taxpayer is allowable.

Section 3.01 of Rev. Proc. 2011-26 provides that depreciable property is eligible for the 100-percent additional first year depreciation deduction if the property is qualified property (as defined in section 168(k)(2)) and also meets the additional requirements in section 3.02 of Rev. Proc. 2011-26. Further, it provides that for purposes of determining whether depreciable property is qualified property, rules similar to the rules in section 1.168(k)-1 of the Income Tax Regulations for “qualified property” or for “30-percent additional first year depreciation deduction” apply.

Section 3.02(1) of Rev. Proc. 2011-26 provides that for purposes of section 168(k)(5), qualified property is eligible for the 100-percent additional first year depreciation deduction if the property meets all of the following requirements in the first taxable year in which the property is subject to depreciation by the taxpayer, whether or not depreciation deductions for that property are allowable:

(a) The taxpayer acquires the qualified property 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)). Solely for purposes of section 168(k)(5) and section 3.02(1)(a) of Rev. Proc. 2011-26, a taxpayer acquires the qualified property when the taxpayer pays or incurs the cost of the property. Qualified property that a taxpayer manufactures, constructs, or produces (as defined under section 1.168(k)-1(b)(4)(iii)(A) and modified by section 3.02(1)(a) of Rev. Proc. 2011-26 solely for purposes of section 168(k)(5)) for use in its trade or business or for its production of income is acquired by the taxpayer for purposes of section 168(k)(5) and section 3.02(1)(a) of Rev. Proc. 2011-26 when the taxpayer begins constructing, manufacturing, or producing that property (as determined under section 1.168(k)-1(b)(4)(iii)(B)).

(b) The taxpayer places the qualified property in service 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)).

(c) The original use of the qualified property commences with the taxpayer after September 8, 2010.

Section 3.02(2)(a) of Rev. Proc. 2011-26 provides, in relevant part, that if a taxpayer manufactures, constructs, or produces qualified property for use by the taxpayer in its trade or business or for its production of income, rules similar to the self-constructed property rules in section 1.168(k)-1(b)(4)(iii) apply for determining whether this property meets the acquisition requirement of section 3.02(1)(a) of Rev. Proc. 2011-26.

Section 3.02(2)(b) of Rev. Proc. 2011-26, however, provides a limited exception to sections 1.168(k)-1(b)(4)(iii)(C)(1) and (2) for certain components of a larger self-constructed property solely for purposes of section 168(k)(5) and section 3.02(1)(a) of Rev. Proc. 2011-26. If before September 9, 2010, a taxpayer begins the manufacture, construction, or production of the larger self-constructed property that is qualified property for use in its trade or business or for its production of income, but this larger self-constructed property meets the requirements of sections 3.02(1)(b) and (c) of Rev. Proc. 2011-26, the taxpayer may elect to treat any acquired or self-constructed component of that larger self-constructed property as being eligible for the 100-percent additional first year depreciation deduction if the component is qualified property and is acquired or self-constructed 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)). The taxpayer may make this election for one or more components that are described in section 3.02(2)(b) of Rev. Proc. 2011-26. The taxpayer must make the election in section 3.02(2)(b) of Rev. Proc. 2011-26 by the due date (including extensions) of the federal tax return for the taxpayer's taxable year in which the larger self-constructed property is placed in service by the taxpayer, and by attaching a statement to that return indicating that the taxpayer is making the election provided in section 3.02(2)(b) of Rev. Proc. 2011-26 and whether the taxpayer is making the election for all or some of the components described in section 3.02(2)(b) of Rev. Proc. 2011-26.

Under section 301.9100-1, the Commissioner of Internal Revenue 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:

(1) P, S1, and S5 are granted 60 calendar days from the date of this letter to make the election provided in section 3.02(2)(b) of Rev. Proc. 2011-26 to deduct the 100-percent additional first year depreciation for components of a larger self-constructed property that are eligible for that election and placed in service in the taxable year ended Year1, for purposes of section 168(k)(5) and section 3.02(1)(a) of Rev. Proc. 2011-26. This election must be made by P filing an amended consolidated federal income tax return for the taxable year ended Year1, with a statement indicating that P, S1, and S5 are making the election provided in section 3.02(2)(b) of Rev. Proc. 2011-26 for all or some of the components described in section 3.02(2)(b) of Rev. Proc. 2011-26 and placed in service by P, S1, and S5 during the taxable Year1; and

(2) P, S1, S2, S3, S4, and S5 are granted 60 calendar days from the date of this letter to make the election provided in section 3.02(2)(b) of Rev. Proc. 2011-26 to deduct the 100-percent additional first year depreciation for components of a larger self-constructed property that are eligible for that election and placed in service in the taxable year ended Year2, for purposes of section 168(k)(5) and section 3.02(1)(a) of Rev. Proc. 2011-26. This election must be made by P filing an amended consolidated federal tax return for the taxable year ended Year2, with a statement indicating that P, S1, S2, S3, S4, and S5 are making the election provided in section 3.02(2)(b) of Rev. Proc. 2011-26 for all or some of the components described in section 3.02(2)(b) of Rev. Proc. 2011-26 and placed in service by P, S1, S2, S3, S4, and S5 during the taxable year Year2.

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 P, S1, S2, S3, S4, and S5 during the taxable years ended Year1, and Year2 is qualified property (as defined in section 168(k)(2) and section 1.168(k)-1) or is eligible for the 100-percent additional first year depreciation deduction, or when P, S1, S2, S3, S4, and S5 began the manufacture, construction, or production of any item of depreciable property (including components of a larger self-constructed property) placed in service by P, S1, and S5 during the taxable year ended Year1, and by P, S1, S2, S3, S4, and S5 during the taxable year ended Year2.

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

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,

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