

Dear _____ :

This letter responds to a letter dated March 24, 2014, submitted by Parent on behalf of itself and S1, S2, S3, S4, S5, S6, S7 (hereinafter "Taxpayer"), 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)(1) and (k)(5) of the Internal Revenue Code for all classes of qualified property placed in service by Taxpayer during the taxable year ended Date 1 (the A taxable year).

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is part of an affiliated group that joins in filing a consolidated federal income tax return on a fiscal year basis. Taxpayer's consolidated federal income tax return for the A taxable year was timely filed. The period of limitation on assessment under § 6501(a) for the A taxable year has not expired as of the date of this letter.

Taxpayer is a B. Taxpayer placed in service qualified property (as defined in § 168(k)(2)) during the A taxable year.

On Parent's timely filed consolidated federal income tax return for the A taxable year, Taxpayer did not claim the additional first year depreciation deduction for any classes of qualified property placed in service by Taxpayer during that taxable year. Taxpayer, however, inadvertently failed to attach the election statement not to claim the additional first year depreciation deduction for all classes of qualified property placed in service by Taxpayer, as required by § 1.168(k)-1(e)(3)(ii) of the Income Tax Regulations, to the consolidated federal income tax return for the A taxable year.

For the A taxable year, Taxpayer's consolidated federal income tax return was prepared in house. The Taxpayer's tax managers inadvertently failed to include the required election statement not to claim the additional first year depreciation deduction for all classes of qualified property placed in service by Taxpayer, as required by § 1.168(k)-1(e)(3)(ii) of the Income Tax Regulations, because it was thought that the tax return preparation software used to prepare the A consolidated federal income tax return would automatically rollover the required election from the prior year return. The missing election statement was not detected while reviewing the Taxpayer's A consolidated federal income tax return.

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 for any taxable year.

In Date 2, Taxpayer's new tax manager discovered that the required election statement not to claim the additional first year depreciation deduction for all classes of qualified property placed in service by Taxpayer, as required by § 1.168(k)-1(e)(3)(ii), was not attached to the A consolidated federal income tax return

RULING REQUESTED

Taxpayer requests a ruling pursuant to § 301.9100-3 of the Procedure and Administration Regulations that it be granted an extension of time to make the election not to deduct the additional first year depreciation under § 168(k)(1) or (k)(5) for all classes of qualified property placed in service by Taxpayer during the A taxable year.

LAW AND ANALYSIS

Section 168(k)(1) provides a 50-percent additional first year depreciation deduction for the placed-in-service year for qualified property (i) acquired by a taxpayer after December 31, 2007, and before September 9, 2010, or acquired by a taxpayer generally after December 31, 2011, and (ii) placed in service by the taxpayer before January 1, 2014 (or January 1, 2015, for qualified property described in § 168(k)(2)(B) or (C)).

Section 168(k)(5) provides a 100-percent additional first year depreciation deduction for 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 before January 1, 2012 (or January 1, 2013, for qualified property described in § 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 § 1.168(k)-1(e)(2) 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)(1) provides that the election not to deduct additional first year depreciation for a class of property applies to all qualified property that is in that class of property and placed in service in the same taxable year.

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 A taxable year 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 (including extensions) 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 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.

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 A taxable year that qualify for the additional first year depreciation deduction. This election must be made by Parent filing an amended consolidated federal income tax return for the A 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 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 (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 A taxable year is eligible for the additional first year depreciation deduction.

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.

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 yours,

Karla M. Meola

Karla M. Meola
Assistant to the Branch Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax & Accounting)

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