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:

Telephone Number:

Refer Reply To:
CC:ITA:B07
PLR-121530-14

Date:
November 14, 2014

Re: Request for Extension of Time to Make Election to Use the Alternative Depreciation System

Legend

Parent =

S1 =

S2 =

S3 =

S4 =

S5 =

S6 =

S7 =

S8 =

S9 =

S10 =

Date 1 =

Date 2 =

Date 3 =

A =

B =

X =

Dear :

This letter responds to a letter dated May 19, 2014, submitted by Parent on behalf of itself and its subsidiaries, S1, S2, S3, S4, S5, S6, S7, S8, S9, and S10 (hereinafter, Parent and the subsidiaries will be collectively referred to as "Taxpayer"), requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the election under § 168(g)(7) of the Internal Revenue Code to use the alternative depreciation system (ADS) for all tangible depreciable property placed in service by Taxpayer in the taxable year ended Date 2 (the A taxable year).

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is an affiliated group of corporations that files consolidated federal income tax returns. Taxpayer uses the accrual method of accounting. Taxpayer, through its subsidiaries, is primarily engaged in the business of operating X in North America.

Taxpayer does not have in-house tax expertise and is not sophisticated in matters related to U.S. federal tax filings. Due to its lack of knowledge and expertise regarding U.S. federal tax matters, Taxpayer has relied upon B, an outside tax preparer, to prepare its U.S. federal income tax returns and to advise it as to all filings that should be included in its U.S. federal tax return.

On Date 3, Taxpayer engaged B to assist in the preparation of all of its U.S. federal tax filings for the taxable year ended Date 2. Taxpayer had net operating losses (NOLs) from the taxable year ended Date 1 that were set to expire at the end of the A taxable year. In the course of preparing Taxpayer's A U.S. federal income tax return, B discussed with Taxpayer making an ADS election under §168(g)(7) to utilize some of the expiring NOLs. Taxpayer agreed that making the election would be satisfactory and communicated to B its desire to make the election for all tangible depreciable property placed in service by Taxpayer in the taxable year ended Date 2.

B prepared Taxpayer's A federal income tax return. However, B inadvertently failed to include the § 168(g)(7) ADS election in the A federal income tax return. Upon noticing the failure to make the election soon after the timely filing of Taxpayer's A federal income tax return, B advised Taxpayer to remedy the missed election by filing this request.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the election under § 168(g)(7) to use the ADS for all tangible depreciable property placed in service by Taxpayer in the taxable year ended Date 2.

LAW AND ANALYSIS

Section 167(a) provides that there shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear, and obsolescence of property used in taxpayer's trade or business.

The depreciation deduction provided by § 167(a) for tangible property placed in service after 1986 generally is determined under § 168. Section 168 prescribes two methods of accounting for determining depreciation allowances. One method is the general depreciation system in § 168(a) and the other method is the ADS in § 168(g).

In the case of any property to which an election under § 168(g)(7) applies, § 168(g)(1) provides that the depreciation deduction provided by § 167(a) is determined under the ADS. Pursuant to § 168(g)(2), the ADS is depreciation determined by using the straight line method (without regard to salvage value), the applicable convention determined under § 168(d), and a recovery period determined under the table prescribed in § 168(g)(2)(C). For most personal property, the recovery period is the property's class life. Section 168(g)(3) provides special rules for determining class life.

Section 168(g)(7) permits a taxpayer to elect for any class of property for any taxable year to use the ADS for determining depreciation for all property in that class placed in service during that taxable year. However, in the case of nonresidential real property, the election is made separately with respect to each property. Once made, an election to use ADS is irrevocable.

Section 301.9100-7T(a)(1) provides that the election under § 168(g)(7) must be made for the taxable year in which the property is placed in service. Section 301.9100-7T(a)(2)(i) further provides that this election must be made by the due date (including extensions) of the tax return for the taxable year for which the election is to be effective. Section 301.9100-7T(a)(3)(i) provides that the election under § 168(g)(7) is made by

attaching a statement to the tax return for the taxable year for which the election is to be effective.

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.

CONCLUSIONS

Based solely on the facts and representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9110-3 have been satisfied. Accordingly, Taxpayer is granted 60 calendar days from the date of this letter to make the election under § 168(g)(7) to use the ADS for determining depreciation for all tangible depreciable property placed in service by Taxpayer during the taxable year ended Date 2. This election must be made by Taxpayer filing an amended consolidated federal income tax return for the taxable year ended Date 2 in a manner that is consistent with the ADS election, with a statement indicating that Taxpayer is electing to use the ADS under § 168(g)(7) for all tangible depreciable property placed in service by Taxpayer in the taxable year ended Date 2.

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 the items of tangible depreciable property placed in service by Taxpayer in the taxable year ended Date 2 are properly classified under § 168(e). Further, this ruling does not apply to any tangible depreciable property placed in service by Taxpayer in the taxable year ended Date 2 required to use ADS pursuant to § 168(g)(1)(A) through (D).

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 appropriate Industry Director, Large Business & International Division (LB&I).

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,

Willie E. Armstrong, Jr.

WILLIE E. ARMSTRONG, JR.
Senior Technician Reviewer, Branch 7
Office of Associate Chief Counsel
(Income Tax & Accounting)

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