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Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:7
PLR-145223-14

Date:
January 28, 2015

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

Legend

Parent	=	
S1	=	
S2	=	
S3	=	
Date1	=	
Date2	=	
Date3	=	
Date4	=	
A	=	

Dear :

This letter responds to a letter dated December 11, 2014, and supplemental correspondence submitted, by Parent on behalf of itself and its subsidiaries S1, S2, and S3 (hereinafter Parent and SI, S2, and S3 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 not to deduct the additional first year depreciation under § 168(k) of the Internal Revenue Code. Parent submitted the

request for itself for all classes of qualified property placed in service in taxable years ended Date1, Date2, and Date3, for S1 and S2 for all classes of qualified property placed in service in the taxable year ended Date1, and for S3 for all classes of qualified property placed in service in the taxable year ended Date2.

FACTS

Parent represents that the facts are as follows:

Parent is the parent of an affiliated group that includes S1, S2, and S3. The affiliated group files consolidated federal income tax returns on a calendar-year basis. Parent timely filed its consolidated federal income tax returns for the taxable years ended Date1, Date2, and Date3. The period of limitation on assessment under § 6501(a) for each of these taxable years has not expired.

Parent's core business is A. Parent is governed by the rules applicable to cooperatives that were in effect prior to the enactment of subchapter T of the Code under the Revenue Act of 1962, Pub. L. 87-834, 76 Stat. 960.

On each of the consolidated federal income tax returns for the taxable years ended Date1, Date2, and Date3, Parent did not claim the additional first year depreciation deduction for any classes of qualified property placed in service by Parent during each of those taxable years. On the consolidated federal income tax return for the taxable year ended Date1, Parent did not claim on behalf of S1 and S2 the additional first year depreciation deduction for any classes of qualified property placed in service by S1 and S2 during this taxable year. Similarly, on the consolidated federal income tax return for the taxable year ended Date2, Parent did not claim on behalf of S3 the additional first year depreciation deduction for any classes of qualified property placed in service by S3 during this taxable year.

Parent, 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 returns for the taxable years ended Date1, Date2, and Date3.

While preparing the consolidated federal income tax return for the taxable year ended Date4, Parent discovered that it had failed to attach the election statements to the consolidated federal income tax returns for the taxable years ended Date1, Date2, and Date3, with respect to all classes of qualified property.

RULING REQUESTED

Taxpayer requests a ruling pursuant to §§ 301.9100-1 and 301.9100-3 that it be granted an extension of time to make an election under § 168(k)(2)(D)(iii) not to deduct the additional first-year depreciation under § 168(k) for Parent for all classes of qualified property placed in service in taxable years ended Date1, Date2, and Date3, for S1 and S2 for all classes of qualified property placed in service in the taxable year ended Date1, and for S3 for all classes of qualified property placed in service in the taxable year ended Date2.

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 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, 2015 (or January 1, 2016, for qualified property described in § 168(k)(2)(B) or (C)).

Section 168(k)(5) provides a 100-percent additional first year depreciation deduction the placed-in-service year for qualified property acquired by a taxpayer after September 8, 2010, and 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) and (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 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 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 (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.

CONCLUSIONS

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 deduction under § 168(k) for Parent for all classes of qualified property placed in service in taxable years ended Date1, Date2, and Date3, for S1 and S2 for all classes of qualified property placed in service in the taxable year ended Date1, and for S3 for all classes of qualified property placed in service in the taxable year ended Date2. This election must be made by Parent filing amended consolidated federal income tax returns for such taxable years, with a statement indicating that: (1) Parent is electing not to deduct the additional first year depreciation for all classes of qualified property placed in service in taxable years ended Date1, Date2, and Date3; (2) S1 and S2 are electing not to deduct the additional first year depreciation for all classes of qualified property placed in service in the taxable year ended Date 1; and (3) S3 is electing not to deduct the additional first year depreciation deduction for all classes of qualified property placed in service 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 any item of depreciable property placed in service by

Taxpayer during the taxable years ended Date1, Date2, or Date3, 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.

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 and Accounting)

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