**Internal Revenue Service**

Number: **201528018**
Release Date: 7/10/2015

Index Number: 9100.04-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B07
PLR-137145-14

Date:
April 01, 2015

Re: Request for Extension of Time to Make Elections to Use the Alternative Depreciation System and Not to Deduct the Additional First Year Depreciation

Legend

Taxpayer =

City =

Country =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

X =

Dear :

This letter responds to a letter dated October 1, 2014, and supplemental correspondence, submitted on behalf of Taxpayer, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the following two regulatory elections: (1) the election under § 168(g)(7) of the Internal Revenue Code to use the alternative depreciation system under § 168(g) (ADS) for nonresidential real property and qualified leasehold improvement property placed in service in certain taxable years; and (2) the election under § 168(k)(2)(D)(iii) or under § 1.168(k)-1(e)(1)(ii)(B) of the Income Tax Regulations not to deduct the additional first year depreciation for all classes of qualified property or 50-percent bonus depreciation property, as applicable, placed in service in certain taxable years.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is a X corporation, maintains executive offices in City, and is incorporated under the laws of the Country. Taxpayer files federal income tax returns on a calendar year basis and uses an accrual method of accounting.

During Year 1 and Year 2 but before October 23, 2004, Taxpayer placed in service nonresidential real property that also is qualified leasehold improvement property (as defined in § 168(k)(3)) for purposes of § 168(k). During Year 2 and Year 3 but after October 22, 2004, Taxpayer placed in service qualified leasehold improvement property (as defined in § 168(e)(6)) that also is qualified leasehold improvement property (as defined in § 168(k)(3)) for purposes of § 168(k). None of these properties are described in § 168(g)(1)(A) through (D). On its timely filed federal income tax returns for the Year 1, Year 2, and Year 3 taxable years, Taxpayer claimed depreciation for these properties as though it had made an election under § 168(g)(7) to use the ADS. However, Taxpayer inadvertently failed to attach the election statement to use the ADS for such properties to its federal income tax returns for the Year 1, Year 2, and Year 3 taxable years.

Taxpayer placed in service qualified property (as defined in § 168(k)(2)) or 50-percent bonus depreciation property (as defined in § 168(k)(4) as in effect prior to the date of enactment of the Economic Stimulus Act of 2008), as applicable, during Year 1, Year 2, Year 4, and Year 5. Such property includes the aforementioned qualified leasehold improvement property. On its timely filed federal income tax returns for the Year 1, Year 2, Year 4, and Year 5 taxable years, Taxpayer did not claim the additional first year depreciation under § 168(k)(1) or § 168(k)(4)(A) (as in effect prior to the date of enactment of the Economic Stimulus Act of 2008), as applicable, with respect to any qualified property or 50-percent bonus depreciation property, as applicable, placed in service during each of these taxable years. However, Taxpayer inadvertently failed to attach the election statement not to deduct the additional first year depreciation for such

property to its federal income tax returns for the Year 1, Year 2, Year 4, and Year 5 taxable years.

The period of limitations on assessment under § 6501(a) has expired for the Year 1, Year 2, Year 3, Year 4, and Year 5 taxable years.

Taxpayer has filed its federal income tax returns for the Year 1, Year 2, Year 3, Year 4, and Year 5 taxable years and for all subsequent taxable years as if Taxpayer had made timely the aforementioned elections to use the ADS and not to deduct the additional first year depreciation. Taxpayer has disposed of some of the property subject to this ruling request. For such disposed property for which Taxpayer recognized gain or loss, Taxpayer reduced the basis of such property for the greater of the allowed or allowable depreciation as if such elections had been made timely by Taxpayer.

Further, the tax provision in Taxpayer's financial statements for the taxable years at issue was calculated on the basis that Taxpayer had made timely the aforementioned elections to use the ADS and not to deduct the additional first year depreciation.

RULINGS REQUESTED

Taxpayer requests an extension of time pursuant § 301.9100-3 to make the following elections: (1) an election under § 168(g)(7) to use the ADS for the nonresidential real property placed in service in Year 1 and Year 2 but before October 23, 2004, that also is qualified leasehold improvement property for purposes of § 168(k); (2) an election under § 168(g)(7) to use the ADS for the qualified leasehold improvement property placed in service in Year 2 and Year 3 but after October 22, 2004; and (3) an election under § 168(k)(2)(D)(iii) or § 1.168(k)-1(e)(1)(ii)(B), as applicable, to not deduct the additional first year depreciation provided by § 168(k) for all classes of qualified property or 50-percent bonus depreciation property, as applicable, placed in service in Year 1, Year 2, Year 4, and Year 5.

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 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) or under the special rules provided in § 168(g)(3). For nonresidential real property, the recovery period under the ADS is 40 years pursuant to the table in § 168(g)(2)(C). Qualified leasehold improvement property (as defined in § 168(e)(6)) placed in service after October 22, 2004, is classified as 15-year property pursuant to § 168(e)(3)(E)(iv) and, consequently, its recovery period under the ADS is 39 years pursuant to the table in § 168(g)(3)(B).

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.

Accordingly, in the case of the nonresidential real property placed in service by Taxpayer in Year 1 and Year 2 but before October 23, 2004, that also is qualified leasehold improvement property (as defined in § 168(k)(3)) for purposes of § 168(k), the election under § 168(g)(7) is made separately for each such property. Further, in the case of the qualified leasehold improvement property (as defined in § 168(e)(6)) placed in service in Year 2 and Year 3 but after October 22, 2004, the election under § 168(g)(7) applies to all 15-year property placed in service by Taxpayer during the Year 2 and Year 3 taxable years.

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.

Section 168(k)(1) provides 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 after September 8, 2010, and generally before January 1, 2015, and placed in service by the taxpayer generally before January 1, 2015.

Prior to the Economic Stimulus Act of 2008, § 168(k)(1) provided a 30-percent additional first year depreciation deduction in the placed-in-service year for qualified property acquired by a taxpayer after September 10, 2001, and generally before January 1, 2005, and placed in service by the taxpayer generally before January 1,

2005, and § 168(k)(4) provided a 50-percent additional first year depreciation deduction in the placed-in-service year for 50-percent bonus depreciation property acquired by a taxpayer after May 5, 2003, and generally before January 1, 2005, and placed in service by the taxpayer generally before January 1, 2005.

Section 168(k)(2)(A) defines qualified property, subject to certain exceptions and additions, as including MACRS property with a recovery period of 20 years or less, and property that is qualified leasehold improvement property (as defined in § 168(k)(3) and § 1.168(k)-1(c)). Prior to the Economic Stimulus Act of 2008, § 168(k)(4)(B) provided a similar definition for 50-percent bonus depreciation property. *See also* § 1.168(k)-1(b)(2)(i).

Section 168(k)(2)(D)(i)(I) provides that qualified property does not include any property to which the ADS applies, but determined without regard to the election into the ADS provided by § 167(g)(7). Prior to the Economic Stimulus Act of 2008, § 168(k)(4) provided a similar rule for 50-bonus depreciation property. *See also* §§ 1.168(k)-1(b)(2)(ii)(A)(*2*) and 1.168(k)-1(b)(2)(ii)(B)(*1*).

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. Section 1.168(k)-1(e)(1)(ii) provides that for any class of property that is 50-percent bonus depreciation property placed in service during the taxable year, a taxpayer may elect (A) to deduct the 30-percent, instead of the 50-percent, additional first year depreciation, or (B) not to deduct both the 30-percent and the 50-percent additional first year depreciation.

The term “class of property” is defined in § 1.168(k)-1(e)(2) as meaning, in relevant part, generally each class of property described in § 168(e) (for example, 5-year property), or qualified leasehold improvement property as defined in § 1.168(k)-1(c) and depreciated under § 168. 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 the additional first year depreciation for a class of property applies to all qualified property or 50-percent bonus depreciation property, as applicable, 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 the 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 the 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 Year 1, Year 2, Year 4, and Year 5 taxable years 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.

Section 301.9100-3(c)(1)(ii) provides, in relevant part, that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

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, provided that as of the beginning of the first open year: (1) the adjusted basis of the nonresidential real property placed in service in Year 1 and Year 2 but before October 23, 2004, that also is qualified leasehold improvement property (as defined in § 168(k)(3)) for purposes of § 168(k), reflects the reduction in basis for the greater of the depreciation allowed or allowable in the closed year(s) had the election under § 168(g)(7) to use the ADS for such property been made timely by Taxpayer; (2) the adjusted basis of all 15-year property placed in service in Year 2 and Year 3, including the qualified leasehold improvement property (as defined in § 168(e)(6)) placed in service in Year 2 and Year 3 but after October 22, 2004, reflects the reduction in basis for the greater of the

depreciation allowed or allowable in the closed year(s) had the election under § 168(g)(7) to use the ADS for such property been made timely by Taxpayer; and (3) the adjusted basis of any qualified property or 50-percent bonus depreciation property, as applicable, placed in service in Year 1, Year 2, Year 4, and Year 5 reflects the reduction in basis for the greater of the depreciation allowed or allowable in the closed year(s) had the election under § 168(k)(2)(D)(iii) or § 1.168(k)-1(e)(1)(ii)(B), as applicable, not to deduct the additional first year depreciation for such property been made timely by Taxpayer.

Taxpayer is granted 60 calendar days from the date of this letter ruling to make the elections: (1) under § 168(g)(7) to use the ADS for the nonresidential real property placed in service in Year 1 and Year 2 but before October 23, 2004, that also is qualified leasehold improvement property (as defined in §168(k)(3)) for purposes of § 168(k); (2) under § 168(g)(7) to use the ADS for 15-year property placed in service in Year 2 and Year 3, including the qualified leasehold improvement property (as defined in § 168(e)(6)) placed in service in Year 2 and Year 3 but after October 22, 2004; and (3) under § 168(k)(2)(D)(iii) or § 1.168(k)-1(e)(1)(ii)(B), as applicable, to not deduct the additional first year depreciation provided by § 168(k) for all classes of qualified property or 50-percent bonus depreciation property, as applicable, placed in service in Year 1, Year 2, Year 4, and Year 5. Because the Year 1, Year 2, Year 3, Year 4, and Year 5 taxable years are closed by the period of limitations on assessment under § 6501(a), Taxpayer must make these elections by filing, with the IRS Service Center(s) where Taxpayer filed its original federal income tax returns for such taxable years, a copy of this letter ruling and a statement indicating that Taxpayer is making the aforementioned elections.

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 in Year 1, Year 2, Year 3, Year 4, or Year 5 is eligible for the additional first year depreciation deduction provided by § 168(k) or is required to use the 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 the appropriate operating division director.

The 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,

KATHLEEN REED

KATHLEEN REED
Branch Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax & Accounting)

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