

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Refer Reply To:
CC:ITA:B07
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Date:
March 26, 2015

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

LEGEND

- Taxpayer =
- Seller =
- Buyer =
- Property X =
- State Y =
- State Z =
- Year 1 =
- Year 2 =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =

Date 6 =

Dear :

This letter responds to a letter dated October 16, 2014, in which Taxpayer requests an extension of time pursuant to section 301.9100-3 of the Procedure and Administration Regulations to make an election not to deduct additional first year depreciation under section 168(k) of the Internal Revenue Code for all classes of qualified property placed in service by Taxpayer in the taxable year ended Date 3 (the Year 2 taxable year).

FACTS

Taxpayer represents the facts as follows:

Taxpayer is an accrual method taxpayer that keeps its book and records on a calendar year end. Effective Date 4, Taxpayer became a member of a group for which Buyer files a consolidated U.S. Federal income tax return. Prior to this date Taxpayer was owned by Seller and was required to file a separate U.S. Federal income tax return.

Taxpayer is a State Z limited liability company that has elected to be treated as a corporation for tax purposes effective Date 1. Its first tax return was for the Year 1 taxable year.

Taxpayer, through its subsidiary limited liability companies that are disregarded entities for U.S. tax purposes, owns and operates Property X, which is located in State Y and reached commercial operation in Year 2. Property X is Taxpayer's sole asset.

On Date 2, Seller and Buyer entered into a purchase and sale agreement (P&S Agreement) whereby Seller agreed to sell all of its ownership interests in Taxpayer to Buyer. The closing of the transaction was effective on Date 3.

Buyer and Seller agreed in the P&S Agreement that Taxpayer would elect out of bonus depreciation under section 168(k) with respect to assets acquired during the tax period ending on or prior to the closing date of Date 3.

Under the P&S Agreement, Seller was responsible for preparing and filing the Taxpayer's Federal income tax return for the Year 2 taxable year. This return was due on Date 5. Taxpayer timely filed for an extension to file this return such that the extended due date was Date 6.

Seller engaged an accounting firm to prepare Taxpayer's Federal income tax return for the Year 2 taxable year. Due to complex accounting issues and internal staffing issues at the accounting firm, the accounting firm was unable to prepare this return by the extended due date of Date 6. This fact was not communicated to Seller in time for Seller to engage a different tax preparer. Accordingly, Taxpayer did not timely file its Federal income tax return for the Year 2 taxable year.

After Taxpayer submitted this request for an extension of time to make the election not to deduct additional first year depreciation, Taxpayer filed its Federal income tax return for the Year 2 taxable year. On that return, Taxpayer did not deduct additional first year depreciation for any property placed in service by Taxpayer during the Year 2 taxable year. Taxpayer also attached a statement to that return indicating that Taxpayer is electing not to deduct the additional first year depreciation for all classes of property placed in service during that taxable year.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to section 301.9100-3 to make the election not to deduct the additional first year depreciation deduction under section 168(k) for all classes of qualified property placed in service by Taxpayer during the taxable year ended on Date 3.

LAW AND ANALYSIS

Section 168(k)(1) allows 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 by a taxpayer after December 31, 2011 (after December 31, 2012, in the case of qualified property described in section 168(k)(2)(B) or (C)), and placed in service by the taxpayer before January 1, 2014 (before January 1, 2015, in the case of qualified property described in section 168(k)(2)(B) or (C)).

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 section 1.168(k)-1(e)(2) of the Income Tax Regulations as meaning, in general, each class of property described in section 168(e) (for example, 5-year property). See section 5.01 of Rev. Proc. 2008-54, 2008-2 C.B. 722 (rules similar to the rules in section 1.168(k)-1 for "qualified property" or for "30-percent additional first year depreciation deduction" apply for purposes of section 168(k) as currently in effect).

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 year ended on Date 3, 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 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 section 301.9100-1, the Commissioner 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, Taxpayer is granted an extension to the date on which Taxpayer filed its Federal income tax return for the taxable year ending on Date 3, to make the election not to deduct the additional first year depreciation under section 168(k) for all classes of property placed in service by Taxpayer during that taxable year that qualify for the additional first year depreciation deduction.

This letter does not grant an extension of time for filing Taxpayer's Federal income tax return for the taxable year ending on Date 3.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter under any provisions of the Code (including other subsections of section 168). Specifically, no opinion is expressed or implied on whether Property X is placed in service by Taxpayer during the Year 2 taxable year, or whether any item of depreciable property placed in service by Taxpayer during the Year 2 taxable year is eligible for the additional first year depreciation deduction.

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.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

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

Sincerely,

/s/ Kathleen Reed

Kathleen Reed
Chief, Branch 7
Office of the Associate Chief Counsel
(Income Tax & Accounting)

Enclosures (2):

Copy of this letter

Copy for 6110 purposes

cc: