

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201541001**
Release Date: 10/9/2015
Index Number: 9100.04-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B07
PLR-100837-15

Date:
July 09, 2015

Re:

Legend

Taxpayer =

A =

Date 1 =

Date 2 =

Dear _____ :

This letter responds to a letter dated December 23, 2014, and supplemental correspondence, submitted by 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 real and personal tangible depreciable property placed in service in the taxable years ended Date 1 and Date 2.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer uses the accrual method of accounting and files tax returns on a calendar year basis. Taxpayer's business activity is electric power generation. Taxpayer reported a net loss on its federal tax returns for the taxable years ended Date

1 and Date 2. Further, on the returns, Taxpayer determined its depreciation deductions using the general depreciation system of §168(a) instead of the ADS.

Taxpayer relied on A, a certified accounting firm, to prepare its federal income tax returns for taxable years ended Date 1 and Date 2. In preparing the returns, A did not inform Taxpayer that Taxpayer could elect to use the ADS to determine depreciation for certain or all classes of property placed in service during the taxable years ended Date 1 and Date 2. If the officers of Taxpayer had been aware of this election, Taxpayer would have made the election to use the ADS for real and personal tangible depreciable property placed in service during the taxable years ended Date 1 and Date 2.

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 method of depreciation for real and personal tangible depreciable property placed in service during the taxable years ended Date 1 and 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 301.9100-3 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 real and personal tangible depreciable property placed in service by Taxpayer during the taxable years ended Date 1 and Date 2. This election must be made by Taxpayer filing an amended federal income tax return for the taxable years ended Date 1 and 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 real and personal tangible depreciable property placed in service during the 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 the items of real and personal tangible depreciable property placed in service by Taxpayer in the taxable years ended Date 1 and Date 2 are properly classified under § 168(e). Further, no opinion is expressed or implied on whether the items of depreciable property Taxpayer placed in service in the taxable

years ended Date 1 and Date 2 are required to use the ADS pursuant to § 168(g)(1)(A) through (D).

In accordance with the power of attorney on file with this office, 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 Industry Director, Large Business & International Division (LB&I).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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