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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:ITA:7
PLR-104914-15

Date:
August 05, 2015

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

Taxpayer =
A =
B =
C =
D =
Date1 =
Date2 =

Dear :

This ruling responds to a letter dated January 30, 2015, and supplemental correspondence, submitted by Taxpayer requesting an extension of time pursuant to §§ 301.9100-1 and 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 (Code) for all classes of qualified property placed in service in the taxable year ended Date1.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is a privately owned company taxed as a Subchapter S Corporation. Taxpayer files Form 1120S, *U.S. Income Tax Return for an S Corporation*, on a calendar-year basis. Taxpayer's operations are conducted through various qualified Subchapter S subsidiaries, which are disregarded entities for federal income tax purposes, and other disregarded entities. Taxpayer is engaged in the business of manufacturing and selling A and other B related products. Taxpayer's various manufacturing operations are located within the C. Taxpayer placed in service qualified

property (as defined in § 168(k)(2)) during the taxable year ended Date1 (the Date2 taxable year).

Taxpayer timely electronically filed its Form 1120S for the taxable year ended Date1 by the extended due date of the tax return. On this return, Taxpayer did not claim the additional first year depreciation deduction for all classes of qualified property placed in service by Taxpayer during the taxable year ended Date1. Taxpayer reported income to its shareholders on Schedule K-1 on the basis that it made such election and each shareholder filed its Date2 federal income tax return and paid income tax as though Taxpayer made such election.

Taxpayer intended to make an election not to deduct the additional first year depreciation under § 168(k) for all classes of qualified property placed in service in the taxable year ended Date1. Taxpayer, however, inadvertently failed to attach the election statement, as required by § 168(k), to its Form 1120S for the taxable year ended Date1 with respect to all classes of qualified property.

Subsequent to filing its Form 1120S for the taxable year ended Date1, Taxpayer discovered that it had failed to attach the election statement to the return for the taxable year ended Date1 with respect to all classes of qualified property. Thereafter, Taxpayer contacted D, a certified public accounting firm, for advice to correct this mistake. D advised Taxpayer to file this request.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 to file the election not to deduct the additional first year depreciation under § 168(k) for all classes of qualified property placed in service during the taxable year ended Date1.

LAW AND ANALYSIS

Section 168(k)(1) provides a 50-percent additional first year depreciation deduction for qualified property (i) acquired by a taxpayer after December 31, 2007, and before January 1, 2015, 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)(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 § 1.168(k)-1(e)(2) of the Income Tax Regulations 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 (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 the 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 year ended Date1 provide 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 § 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 under § 168(k) for all classes of property placed in service during the taxable year ended Date1 that qualify for additional first year depreciation. The election must be made by Taxpayer filing an amended federal tax return for that taxable year, with a statement indicating that Taxpayer is

electing not to deduct the additional first year depreciation for all classes of qualified property placed in service during that 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 any item of depreciable property placed in service during the taxable year ended Date1 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.

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

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