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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B07
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Date:
September 04, 2015

Re:

Legend

Taxpayer =

A =

B =

Date 1 =

Date 2 =

Dear :

This letter responds to a letter dated April 20, 2015, submitted on behalf of Taxpayer, requesting an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administrative Regulations to make the following two regulatory elections: (1) the election under §168(k) of the Internal Revenue Code not to deduct the additional first year depreciation for all classes of qualified property placed in service in certain taxable years; and (2) the election under § 168(g)(7) to use the alternative depreciation system (ADS) for all tangible depreciable property placed in service in certain taxable years.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer, a subchapter C corporation, uses the accrual method of accounting and files federal tax returns on a calendar year basis. Taxpayer is engaged in the land contract drilling business. During the taxable years ended Date 1 and Date 2, Taxpayer experienced an ownership change as defined in § 382(g). As a result, § 382(a) limited its ability to offset post-change taxable income by pre-change net operating losses (NOLs).

Taxpayer does not have in-house tax expertise and is not sophisticated in matters related to U.S. federal income filings. Due to its lack of knowledge and expertise regarding U.S federal tax matters, Taxpayer has relied upon A, an outside tax preparer, to advise it on federal income matters and to prepare all U.S. federal income tax return filings.

Based on A's advice, Taxpayer did not make the election not to deduct the additional first year depreciation under § 168(k) for all qualifying property place in service in the taxable years ended Date 1 and Date 2. Further, Taxpayer did not make the election under §168(g)(7) to use the ADS for all tangible depreciable property placed in service in the taxable years ended Date 1 and Date 2. Taxpayer's failure to make these elections on its federal income tax returns for the taxable years ended Date 1 and Date 2 increased significantly its NOLs for those years.

Despite having full knowledge of the facts pertaining to the § 382 ownership change prior to preparing Taxpayer's federal income tax returns for the taxable years ended Date 1 and Date 2, A did not perform any of analysis of § 382. Further, A did not inform Taxpayer of the potential limitations on NOLs due to § 382.

After filing its federal income returns for the taxable years ended Date 1 and Date 2, Taxpayer made its ownership change documents and historical federal tax returns available to B, an outside tax preparer, for examination. After reviewing the information, B discovered that A did not advise Taxpayer of the § 382 ownership changes and of the potential limitations on NOLs due to the changes. If Taxpayer had been aware of the effects of the § 382 ownership changes on NOLs, and knew all available options, Taxpayer would have made the election not to deduct the additional first year depreciation for all classes of qualified property placed in service and the election to use ADS for all tangible depreciable property placed in service, in the taxable years ended Date 1 and Date 2.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 to make (1) the election under § 168(k) not to deduct additional first year depreciation for all classes of qualified property placed in service, and (2) the election

under § 168(g)(7) to use the ADS for all tangible depreciable property placed in service, in 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.

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, and section 3.01 of Rev. Proc. 2011-26, 2011-16 I.R.B. 664 (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 taxable years ended Date 1 and Date 2 provides 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 301.9110-3 have been satisfied. Accordingly, Taxpayer is granted 60 calendar days from the date of this letter to make (1) the election not to deduct the additional first year depreciation under § 168(k) for all classes of property placed in service by Taxpayer in the taxable years ended Date 1 and Date 2

that qualify for the additional first year depreciation and (2) the election under § 168(g)(7) to use the ADS for determining depreciation for all tangible depreciable property placed in service in the taxable years ended Date 1 and Date 2. The election under § 168(k) must be made by Taxpayer filing an amended federal income tax return for each of those taxable years, with a statement indicating that Taxpayer is electing not to deduct the additional first year depreciation for all classes of property placed in service by Taxpayer in that taxable year. The election under § 168(g)(7) must be made by Taxpayer filing an amended federal income tax return for each of those taxable years, with a statement indicating that Taxpayer is electing to use the ADS under § 168(g)(7) for all tangible depreciable property placed in service by Taxpayer in 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 § 382 and other subsections of § 168). Specifically, no opinion is expressed or implied on whether any item of depreciable property placed in service in the taxable years ended Date 1 and Date 2 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).

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent 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 & Accounting)

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