Internal Revenue Service

Number: **201626013**
Release Date: 6/24/2016

Index Number: 9100.04-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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, ID No.

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Refer Reply To:
CC:ITA:7
PLR-135343-15

Date:
March 24, 2016

In re: Request for Extension of Time to Make the General Asset Account Election

Legend

P	=
A	=
B	=
C	=
D	=
Year1	=
Year2	=
Date1	=
Date2	=
Date3	=
Date4	=
Date5	=
Date6	=
Date7	=
Date8	=
Date9	=
Date10	=
Date11	=
Building1	=
Building2	=
Building3	=
Building4	=

Building5 =
Building6 =
Building7 =
Building8 =
Building9 =
City =

Dear :

This letter responds to a letter dated June 19, 2015, and supplemental correspondence submitted, by P on behalf of itself, A, and B, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make a general asset account election for certain buildings placed in service during the taxable year ended Date1 (the Year1 taxable year).

FACTS

P represents that the facts are as follows:

P is a corporation that elected status as an S corporation in Year2, which is before P's Year1 taxable year. P's wholly-owned subsidiary, A, is a corporation for which a qualified subchapter S corporation (QSub) election under § 1.1361-3 of the Income Tax Regulations has been in effect since P elected S corporation status in Year2. All assets, liabilities, and items of income, deduction, and credit of A have been treated as such items of P in accordance with § 1361(b)(3) of the Internal Revenue Code since the QSub election was made.

A's main business is C. B was formed on Date2, which is during P's Year1 taxable year, for the purpose of D.

At the time of its formation, B was 100-percent owned by A and no election was made under § 301.7701-3(c) for B to be treated as a corporation for federal income tax purposes. As such, B was treated as disregarded as an entity separate from A in accordance with § 301.7701-3(b)(ii). As a result of application of § 301.7701-3(b)(ii) and § 1361(b)(3), all activity related to B was reported on P's federal income tax returns from Date2, until Date3.

On Date3, an individual who is majority owner of P made a capital contribution in exchange for a membership interest in B, making it no longer 100-percent owned by A. No election was made under § 301.7701-3(c) for B to be treated as a corporation for federal income tax purposes. As such, B has been treated as a partnership in accordance with § 301.7701-3(b)(i) since Date3.

On Date4, which is during P's Year1 taxable year, B purchased and placed in service the following 9 buildings: Building1, Building2, Building3, Building4, Building5,

Building6, Building7, Building8, and Building9. In addition to the purchase price for these buildings, the legal fees incurred in connection with the acquisition of the buildings were capitalized into their bases.

Upon acquiring these buildings, P considered several scenarios related to the ultimate use of the buildings, including renovation of the existing buildings, demolishing some or all of the existing buildings and constructing an entirely new structure, or selling some or all of the buildings to developers or other parties who would not displace A's business operations in Building6 and Building7.

In Date5, which is during the month in which P filed its federal tax return for the Year1 taxable year, P began communicating with the City city council regarding the viability of demolishing the 9 buildings and constructing a new structure in their place. In Date6, P presented a definitive plan along with requests to City related to zoning and financial assistance. After working through multiple issues over the next several months including zoning, financing, tax incentives, and other matters, the City city council approved P's plan in Date7. All of the buildings with the exception of Building3 were demolished in Date8. Date8 is during P's taxable year ended Date10, but before Date3.

P timely filed its federal tax return for its taxable year ended Date1. This federal tax return included all items of income, deductions, and credits of A and B, including depreciation deductions for Building1 through Building9. However, the election under § 168(i)(4) was not made to account for Building1 through Building9 in general asset accounts. P relied on the advice given by the public accounting firm that P retained to prepare its federal tax return for the taxable year ended Date1. This accounting firm was responsible for including required elections necessary for a complete return, but did not discuss with P about making the election under § 168(i)(4).

P filed its federal income tax returns for the taxable years ended Date1, Date9, and Date10, consistent with having made a timely election under § 168(i)(4) to account for Building1 through Building9 in general asset accounts. P includes each building in a separate general asset account. P's taxable years ended Date9, and Date10, are the first and second taxable years succeeding P's taxable year ended Date1.

The period of limitations on assessment under § 6501(a) expired for P's taxable year ended Date1, on Date11, which is before the date of this letter ruling.

RULING REQUESTED

Accordingly, P requests an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 to make the election under § 168(i)(4) and § 1.168(i)-1 for the taxable year ended Date1, to account for all buildings placed in service by B on Date4, in general asset accounts.

LAW AND ANALYSIS

Section 168(i)(4) provides that, under regulations, a taxpayer may maintain one or more general asset accounts for any property to which § 168 applies. Except as provided in the regulations, all proceeds realized on any disposition of property in a general asset account are included in income as ordinary income.

Section 1.168(i)-1 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies for the Year1 taxable year. Except as specifically provided in this letter ruling, any reference hereinafter to § 1.168(i)-1 refers to such section as contained in 26 CFR part 1 edition revised as of April 1, 2011.

Section 1.168(i)-1 provides rules for general asset accounts under § 168(i)(4). Section 1.168(i)-1(a) provides that the provisions of § 1.168(i)-1 apply only to assets for which an election has been made under § 1.168(i)-1(k).

Section 1.168(i)-1(k)(1) provides that, if a taxpayer makes an election under § 1.168(i)-1(k), the taxpayer consents to, and agrees to apply, all of the provisions of § 1.168(i)-1 to the assets included in a general asset account. Except as provided in § 1.168(i)-1(c)(1)(ii)(A) (special rules for assets generating foreign source income), (e)(3) (special rules applicable to dispositions of assets included in a general asset account), (g) (assets subject to recapture), or (h) (changes in use), an election made under § 1.168(i)-1(k) is irrevocable and will be binding on the taxpayer for computing taxable income for the taxable year for which the election is made and for all subsequent taxable years. An election under § 1.168(i)-1(k) is made separately by each person owning an asset to which § 1.168(i)-1 applies (for example, by each member of a consolidated group, at the partnership level (and not by the partner separately), or at the S corporation level (and not by the shareholder separately)).

Section 1.168(i)-1(k)(2) provides that the election to apply § 1.168(i)-1 shall be made on the taxpayer's timely filed (including extensions) income tax return for the taxable year in which the assets included in the general asset account are placed in service by the taxpayer.

Section 1.168(i)-1(k)(3) provides that, in the year of election, a taxpayer makes the election under § 1.168(i)-1 in the manner provided for on Form 4562, "Depreciation and Amortization," and its instructions. The instructions to the Form 4562 for the Year1 taxable year provided that the general asset account election is made by checking the box on line 18 of the Form 4562.

Section 1.168(i)-1(k)(3) further provides that the taxpayer shall maintain records that identify the assets included in each general asset account, that establish the unadjusted depreciable basis and depreciation reserve of the general asset account, and that reflect the amount realized during the taxable year upon dispositions from each general asset account. The taxpayer's recordkeeping practices should be consistently applied to the general asset accounts.

Under § 301.9100-1, the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9102-2 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 to 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 the 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) provides that the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief.

Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Similarly, if the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made.

Section 301.9100-3(c)(1)(ii) provides 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 § 301.9100-3. The IRS may condition a grant of relief on the taxpayer providing the IRS with a statement from an independent auditor (other than an auditor providing an affidavit pursuant to § 301.9100-3(e)(3)) certifying the interests of the Government are not prejudiced under the standards set forth in § 301.9100-3(c)(1)(i).

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. Although the period of limitations on assessment under § 6501(a) expired for P's Year1 taxable year before the date of this letter ruling, we have determined that the interests of the

Government are not prejudiced. Because P filed its federal income tax returns for the taxable years ended Date1, Date9, and Date10, consistent with having made a timely election under § 168(i)(4) to account for Building1 through Building9 in general asset accounts, there is not any change either in the adjusted depreciable bases of Building1 through Building9 or in P's federal tax liability for those taxable years had if such election had been timely made. Accordingly, A is treated as making the election under § 168(i)(4) and § 1.168(i)-1 for the taxable year ended Date1, to account for all buildings placed in service by B on Date4, in one or more general asset accounts.

Except as specifically ruled upon above, no opinion is expressed or implied 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 either the consequences under § 168(i)(4) and § 1.168(i)-1 (as it applies to taxable years beginning on or after January 1, 2014, which is contained in 26 CFR part 1 edition revised as of April 1, 2015) of B's change in status from a disregarded entity to a partnership on Date3, or the propriety of the depreciation method, recovery period, and convention used to depreciate the buildings placed in service by B on Date 4.

This 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.

In accordance with the power of attorney, we are sending a copy of this letter to P's authorized representatives. We are also sending a copy of this letter to the appropriate Industry Director, LB&I.

Sincerely,

Kathleen Reed

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

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