Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:7
PLR-100402-16

Date:
June 20, 2016

Re:

P	=
S1	=
S2	=
S3	=
S4	=
S5	=
Firm	=
Date	=

Dear :

This letter responds to a letter dated December 28, 2015, and subsequent correspondence, submitted by P on behalf of S1, S2, S3, S4, and S5 (hereinafter, S1, S2, S3, S4, and S5 will be collectively referred to as Taxpayer) requesting an extension of time pursuant to § 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 for certain classes of qualified property placed in service in the taxable year ended Date.

All references in this letter ruling to § 168(k) are treated as a reference to § 168(k) as in effect on the day before the date of the enactment of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), enacted as part of the Consolidated Appropriations Act, 2016, Division Q, Pub. L. 114-113, 129 Stat. 2242 (December 18, 2015).

FACTS

P represents that the facts are as follows:

P is the common parent of an affiliated group of corporations, including wholly-owned subsidiaries, S1, S2, S3, S4, and S5, that files consolidated federal income tax returns with a taxable year ending December 31. Taxpayer's primary business activity is airline transportation.

During the taxable year ended Date, S1, S2, S3, and S4 placed in service 5-year and 7-year property, and S5 placed in service 5-year property. These 5-year property and 7-year property are qualified property (as defined in § 168(k)(2)). After consulting with Firm, P decided to make the election under § 168(k)(2)(D)(iii) not to claim the 50-percent additional first year depreciation for these classes of property and for Taxpayer.

On P's timely filed consolidated federal income tax return for the taxable year ended Date, Taxpayer did not claim the additional first year depreciation deduction for the following qualified property: 5-year property placed in service by Taxpayer, and 7-year property placed in service by S1, S2, S3, and S4, during the taxable year ended Date. However, P and Taxpayer inadvertently failed to attach to such return, as required by § 1.168(k)-1(e)(3)(ii) of the Income Tax Regulations, the election statement not to claim the additional first year depreciation deduction for such classes of qualified property.

RULING REQUESTED

Taxpayer requests 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) for the following classes of property that qualify for additional first year depreciation: 5-year property placed in service by Taxpayer, and 7-year property placed in service by S1, S2, S3, and S4, during the taxable year ended Date.

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LAW AND ANALYSIS

Section 168(k)(1) provides a 50-percent additional first year depreciation deduction for the placed- in-service year for qualified property (i) acquired by a taxpayer after December 31, 2007, and before September 9, 2010, or after December 31, 2011 (or December 31, 2012, for qualified property described in § 168(k)(2)(B) or (C)), and before January 1, 2015, and (ii) placed in service by the taxpayer before September 9, 2010, or after December 31, 2011 (or December 31, 2012, for qualified property described in § 168(k)(2)(B) or (C)), and 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) 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)(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 Date, 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 the following classes of property that qualify for additional first year depreciation: 5-year property placed in service by Taxpayer, and 7-year property placed in service by S1, S2, S3, and S4, during the taxable year ended Date. This election must be made by P filing an

amended consolidated federal income tax return for that taxable year, with a statement indicating that Taxpayer is electing not to deduct the additional first year depreciation for 5-year property placed in service by Taxpayer, and for 7-year property placed in service by S1, S2, S3, and S4, 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 Date, is eligible for the additional first year depreciation deduction.

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 ruling to P's authorized representative. We also are sending a copy of this letter ruling to the appropriate operating division director.

Sincerely,

Kathleen Reed

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

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