Internal Revenue Service

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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:B07
PLR-123255-16

Date:
January 18, 2017

Re:

LEGEND:

P =
S1 =
S2 =
S3 =
S4 =
A =
B =
Date1 =
Date2 =
Date3 =
Date4 =
Date5 =

Dear :

This letter ruling responds to a letter dated July 25, 2016, and supplemental correspondence, submitted by P on behalf of itself and S1, S2, S3, and S4 (hereinafter P, S1, S2, S3, and S4 will be collectively referred to as Taxpayer), requesting an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations (1) to make the election not to deduct the additional first year depreciation under § 168(k) of the Internal Revenue Code for all classes of qualified property placed in service by Taxpayer during the taxable year ended Date1, and (2) to file a safe harbor election under Rev. Proc. 2011-29, 2011-18 I.R.B. 746, for success-based fees incurred by P during the taxable year ended Date1.

All references in this letter ruling to § 168(k) are treated as a reference to § 168(k) as in effect prior to amendment by § 143(b)(1) 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 was the common parent of an affiliated group of corporations, including wholly-owned subsidiaries, S1, S2, S3, and S4, that filed consolidated federal income tax returns on a calendar year basis. Taxpayer was primarily engaged in the retail and commercial banking business, providing a variety of financial services to complement its banking operations including insurance, investment advisory, and leasing services. Taxpayer's overall method of accounting was the accrual method.

On Date1, P merged with and into A, with A as the surviving corporation in the merger. In connection with this transaction, P incurred success-based fees in the total amount of $B during the taxable year ended Date1. As a result of this transaction, P and P's subsidiaries were required to file a consolidated federal income tax return for the short taxable year ended Date1.

Taxpayer placed in service qualified property (as defined in § 168(k)(2) before the application of § 168(k)(2)(D)(iii)) during the taxable year ended Date1. For such property, Taxpayer decided, before the due date (without extensions) of P's consolidated federal income tax return for such taxable year, to make the election not to deduct the additional first-year depreciation.

P's consolidated federal income tax returns are prepared in house. The due date (without extensions) for P's consolidated federal income tax return for the taxable year ended Date1, was Date2. A member of P's tax department incorrectly determined that such due date for such return was Date3, instead of Date2. Based on this erroneous determination, P did not file the Form 7004, Application for Automatic Extension of Time to File Certain Tax, Information, and Other Returns, for the taxable year ended Date1. This failure to file the Form 7004, which was not discovered until Date4, resulted in P's consolidated federal income tax return for the taxable year ended Date1, not being timely filed.

P filed its consolidated federal income tax return for the taxable year ended Date1, on Date5. On this return, (1) Taxpayer represents that it did not deduct the additional first year depreciation for all classes of qualified property placed in service during the taxable year ended Date1, and (2) P represents that it treated 70 percent of the success-based fees that were incurred in connection with the merger with A as

deductible amounts that do not facilitate that transaction. To this return, Taxpayer represents that it attached (1) a statement stating that Taxpayer is making the election under § 168(k)(2)(D)(iii) not to deduct the additional first year depreciation for all classes of qualified property placed in service during the taxable year ended Date1, and (2) the statement required by section 4.01(3) of Rev. Proc. 2011-29 with respect to the success-based fees incurred in connection with the merger with A.

Because P did not timely file its consolidated federal income tax return for the taxable year ended Date1, Taxpayer failed to make the election not to deduct the additional first year depreciation for all classes of qualified property placed in service during the taxable year ended Date1.

However, with respect to the success-based fees incurred during the taxable year ended Date1, in connection with the merger with A, P represents, in additional information submitted on November 18, 2016, that the statement required by section 4.01(3) of Rev. Proc. 2011-29 was attached to P's original consolidated federal income tax return for the taxable year ended Date1. Section 4.01(3) of Rev. Proc. 2011-29 requires the statement to be attached to the original federal income tax return for the taxable year the success-based fee is paid or incurred. Therefore, since the safe harbor election has been properly filed, P does not need relief under §§ 301.9100-1 and 301.9100-3.

RULING REQUESTED

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

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, 2016, 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, 2016 (or January 1, 2017, 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 Date1, provided 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.

CONCLUSION

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 an extension to, and including, Date5, to make the election not to deduct the additional first year depreciation under § 168(k) for all classes of property placed in service by Taxpayer during the taxable year ended Date1, that qualify for the additional first year depreciation deduction. In this regard, we will consider this election made by Taxpayer on P's consolidated federal income tax return for the taxable year ended Date1, filed on Date5, to be timely made.

Except as specifically ruled upon above, no opinion is expressed or implied concerning the 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 by Taxpayer in the taxable year ended on Date1, is eligible for the additional first year depreciation deduction under § 168(k)(1). Further, no opinion is expressed or implied as to whether Taxpayer properly included the correct costs as its success-based fees for which the safe harbor election under Rev. Proc. 2011-29 was filed, or whether Taxpayer's transaction was within the scope of Rev. Proc. 2011-29.

Further, this letter ruling does not grant an extension of time for filing P's consolidated federal income tax return for the taxable year ended Date1.

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

Sincerely,

Kathleen Reed

Kathleen Reed
Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures (2):
Copy of this letter
Copy for section 6110 purpose s