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Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Refer Reply To:
CC:ITA:B07
PLR-104729-17

Date:
August 03, 2017

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

Legend

Parent =

S1 =

S2 =

S3 =

S4 =

S5 =

S6 =

Date 1 =

Date 2 =

Date 3 =

A =

B =

C =

D =

E =

F =

G =

H =

I =

J =

K =

L =

M =

N =

O =

P =

Dear :

This letter responds to a letter dated February 1, 2017, and subsequent correspondence, submitted by Parent on behalf of itself and S1, S2, S3, S4, S5, and S6 (hereinafter 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 its D-year, E-year, and F-year classes of qualified property placed in service by Taxpayer during the taxable year ended Date 1 (the A taxable year).

All references in this letter ruling to § 168(k) are treated as a reference to § 168(k) as in effect: (i) prior to amendment by § 143(b) 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), for qualified property acquired by Taxpayer after 2007 and placed in service by Taxpayer

before 2016, and (ii) after amendment by § 143(b) of the PATH Act for qualified property placed in service by Taxpayer after 2015. The amendments made to § 168(k) by § 143(b) of the PATH Act generally are effective for property placed in service after December 31. 2015. *See* § 143(b)(7)(A) of the PATH Act.

FACTS

Taxpayer represents that the facts are as follows:

Parent is a corporation and the common parent of an affiliated group of corporations that includes S1, S2, S3, S4, S5, and S6. The affiliated group of corporations files a consolidated federal income tax return on a fiscal year basis. Parent is an apparel company B. Taxpayer uses the accrual method of accounting for federal income tax purposes and in maintaining its books and records and uses a C for tax and financial reporting purposes. Taxpayer timely filed its consolidated federal income tax return for the A taxable year. The period of limitation on assessment under § 6501(a) for the A taxable year has not expired as of the date of this letter.

During its A taxable year, Taxpayer placed in service D-year, E-year, and F-year property that is qualified property as defined in § 168(k)(2) with a total cost of $G. Of this amount, $H is D-year property that was placed in service by Parent, S1, S2, S3, S4, and S6; $I is E-year property that was placed in service by Parent, S2, S5, and S6; and $J is F-year property that was placed in service by S6. On Parent's consolidated federal income tax return for the A taxable year, Taxpayer claimed the additional first year depreciation with respect to such property.

Parent's tax department prepared the consolidated federal income tax return for the A taxable year. M of Parent's tax department has overall responsibility for such return. Parent's tax department considered making the election not to deduct the additional first year depreciation for qualified property placed in service during the A taxable year. In making the decision not to make this election for the D-year, E-year, and F-year property placed in service by Taxpayer during the A taxable year, various tax attributes of Parent's consolidated group, including foreign tax credit carryovers, were taken into account. Certain of the foreign tax credit carryovers to the A taxable year were attributable to K, which Parent acquired in L, for K's taxable year ended Date 2.

As part of this decision-making process, M reviewed the foreign tax credit schedule. It showed K's foreign tax credits as arising in N, with no indication that these foreign tax credits actually arose in K's taxable year ended Date 2. As a result, M believed that this foreign tax credit carryover could be utilized through the year ending Date 3 (the O taxable year), which is the taxable year ending after the A taxable year. However, because these foreign tax credits arose in K's taxable year ended Date 2, the carryover of such credits could only be utilized through the A taxable year. Based on

M's mistaken belief that the foreign tax credit carryover attributable to K for K's taxable year ended Date 2, could be utilized through the O taxable year instead of the A taxable year, the decision was made not to make the election not to deduct the additional first year depreciation for the D-year, E-year, and F-year property that are qualified property and placed in service by Taxpayer during the A taxable year.

Subsequent to the filing of Parent's consolidated federal income tax return for the A taxable year, P of Parent's tax department was reconciling tax attributes as part of planning for the O taxable year. In performing this reconciliation, P realized that the foreign tax credit carryover attributable to K for K's taxable year ended Date 2, would expire unutilized if not utilized in the A taxable year.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 to make the election under § 168(k)(2)(D)(iii) or § 168(k)(7), as applicable, not to deduct the additional first year depreciation under § 168(k) for its D-year, E-year, and F-year property placed in service during the A taxable year that qualify for the additional first year depreciation deduction.

LAW AND ANALYSIS

Qualified property placed in service before 2016

Section 168(k)(1) allowed, in the taxable year that qualified property is placed in service, a 50-percent additional first year depreciation deduction 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 168(k)(2)(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 168(k)(2)(C)) and before January 1, 2016 (or January 1, 2017, for qualified property described in §§ 168(k)(2)(B) or 168(k)(2)(C)).

Section 168(k)(2)(D)(iii) provided that a taxpayer may elect not to deduct additional first year depreciation for any class of property placed in service by the taxpayer during the taxable year. The term "class of property" is defined in § 1.168(k)–1(e)(2)(i) of the Income Tax Regulations to mean, 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)(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 A taxable year 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 (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.

Qualified property placed in service in 2016

Section 168(k)(1) allows, in the taxable year that qualified property is placed in service, a 50-percent additional first year depreciation deduction for qualified property placed in service by the taxpayer before January 1, 2020 (or January 1, 2021, for qualified property described in §§ 168(k)(2)(B) or 168(k)(2)(C)).

Section 168(k)(7) allows a taxpayer to elect not to deduct the additional first year depreciation for any class of property placed in service by the taxpayer during the taxable year.

Section 4.04 of Rev. Proc. 2017-33, 2017-19 I.R.B. 1236, 1240, provides guidance regarding the election under § 168(k)(7) not to deduct the additional first year depreciation (the § 168(k)(7) election). Section 4.04(1) of Rev. Proc. 2017-33 provides that the rules for making the § 168(k)(7) election are similar to the rules for making the election under § 168(k)(2)(D)(iii) as in effect before the enactment of the PATH Act. As a result, the § 168(k)(7) election applies to all qualified property that is in the same class of property and placed in service in the same taxable year. Section 4.04(2) of Rev. Proc. 2017-33 provides that generally rules similar to the rules in § 1.168(k)-1(e)(2), (3), (5) and (7) apply for purposes of § 168(k)(7). Section 4.04(3) of Rev. Proc. 2017-33 provides special rules for a taxpayer with a taxable year beginning in 2015 and ending in 2016.

Sections 301.9100-1 through 301.9100-3

Under § 301.9100-1, the Commissioner of Internal Revenue 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 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 its D-year, E-year, and F-year of property placed in service by Taxpayer during the A taxable year that qualify for the additional first year depreciation deduction. This election must be made by Parent filing an amended consolidated federal income tax return for the A taxable year, with a statement indicating that Taxpayer is electing not to deduct the additional first year depreciation for its D-year, E-year, and F-year 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 by Taxpayer during the A taxable year is eligible for the additional first year depreciation deduction.

The rulings contained in this letter are based upon information and representations submitted by Parent and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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

Sincerely yours,

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 purposes