Internal Revenue Service

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Telephone Number:

Refer Reply To:
CC:ITA:B07
PLR-133623-18

Date:
June 17, 2019

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

Legend

Parent =

S1 =

Date 1 =

Date 2 =

A =

B =

C =

D =

E =

F =

G =

H =

I =

J =

K =

L =

M =

Dear :

This letter responds to a letter dated November 7, 2018, submitted by Parent on behalf of itself and S1 (hereinafter "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 C-year, D-year, E-year, F-year, and G 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 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.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is a B. Taxpayer is part of an affiliated group that joins in filing a consolidated federal income tax return on a calendar year basis. Parent's consolidated federal income tax return for the A taxable year was timely filed. 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 C-year, D-year, E-year, F-year, and G property that is qualified property as defined in § 168(k)(2) with a total cost of $M. Of this amount, $H is C-year property that was placed in service by S1; $I is D-year property that was placed in service by Parent and S1; $J is E-year property that was placed in service by Parent and S1; $K is F-year property that was placed in service by Parent; and $L is G property that was placed in service by Parent. On Parent's consolidated federal income tax return for the A taxable year, Taxpayer did not claim the additional first year depreciation with respect to such property. Taxpayer,

however, inadvertently failed to attach the election statement not to claim the additional first year depreciation deduction for its C-year, D-year, E-year, F-year, and G classes of qualified property placed in service by Taxpayer, as required by § 1.168(k)-1(e)(3)(ii) of the Income Tax Regulations, to the consolidated federal income tax return for the A taxable year.

Taxpayer did not make the election under § 168(k)(4) to accelerate alternative minimum tax credits (and if applicable, research credits) in lieu of the additional first-year depreciation deduction for any class of property placed in service for any taxable year.

For the A taxable year, Parent's consolidated federal income tax return was prepared inhouse by Parent's internal tax department. Taxpayer determined it would make the election under § 168(k)(2)(D)(iii) not to claim additional first year depreciation for its C-year, D-year, E-year, F-year, and G classes of qualified property placed in service by Taxpayer during the A taxable year. Parent's internal tax department prepared it's A tax return consistent with this decision, claiming no additional first year depreciation with respect to Taxpayer's C-year, D-year, E-year, F-year, and G classes of qualified property placed in service by Taxpayer during the A taxable year. However, Parent's internal tax department inadvertently failed to include the required election statement not to claim the additional first year depreciation deduction for its C-year, D-year, E-year, F-year, and G classes of qualified property placed in service by Taxpayer, as required by § 1.168(k)-1(e)(3)(ii). The missing election statement was not detected by Parent's in-house tax professionals while reviewing Parent's A consolidated federal income tax return.

During Date 2, Taxpayer's IRS examining agent discovered that the required election statement not to claim the additional first year depreciation deduction for its C-year, D-year, E-year, F-year, and G classes of qualified property, as required by § 1.168(k)-1(e)(3)(ii), was not attached to the A consolidated federal income tax return.

RULING REQUESTED

Taxpayer requests a ruling pursuant to § 301.9100-3 of the Procedure and Administration Regulations that it be granted an extension of time to make the election under § 168(k)(2)(D)(iii) not to deduct the additional first year depreciation under § 168(k)(1) for its C-year, D-year, E-year, F-year, and G classes of property placed in service by Taxpayer during the A taxable year that qualify for the additional first year depreciation deduction.

LAW AND ANALYSIS

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) 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.

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 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 C-year, D-year, E-year, F-year, and G classes 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 C-year, D-year, E-year, F-year, and G classes of property placed in service by Taxpayer 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,

DEENA DEVEREUX

DEENA DEVEREUX
Senior Technician Reviewer, Branch 7
Office of Associate Chief Counsel
(Income Tax & Accounting)

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