**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-123834-19

Date:
June 19, 2020

Re: Request to make a late election under § 168(k)(7) not to deduct additional first year depreciation

Legend

| | |
|---|---|
| Parent | = |
| Subsidiary 1 | = |
| Subsidiary 2 | = |
| Subsidiary 3 | = |
| Subsidiary 4 | = |
| Subsidiary 5 | = |
| Subsidiary 6 | = |
| Firm | = |
| Date 1 | = |
| A | = |
| B | = |

Dear :

This letter responds to a letter dated October 2, 2019, and subsequent correspondence, submitted by Parent on behalf of Subsidiary 1, Subsidiary 2, Subsidiary 3, Subsidiary 4, Subsidiary 5, and Subsidiary 6 (hereinafter Subsidiaries 1 through 6 are collectively referred to as "Taxpayers"), requesting 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) of the Internal Revenue Code for certain qualified property placed in service by Taxpayers during the taxable year ended Date 1 (the A taxable year). This letter ruling is being issued electronically in accordance with Rev. Proc. 2020-29, 2020-21 I.R.B. 859. A paper copy will not be mailed to Parent.

All references in this letter to § 168(k) are treated as a reference to § 168(k) as in effect after 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) and prior to amendment by the Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017) (TCJA).

## FACTS

Parent represents that the facts are as follows:

Parent is the common parent of an affiliated group of corporations, including Taxpayers, that files a consolidated federal income tax return. Parent files its consolidated federal income tax return on a fiscal year basis and uses an accrual method of accounting. Parent and Taxpayers' primary business is B. For the A taxable year, Parent timely filed its consolidated federal income tax return.

During its A taxable year, Taxpayers placed in service 3-year, 5-year, 7-year, and 15-year property that is qualified property as defined in § 168(k)(2). All such qualified property was acquired and/or placed in service by Taxpayers before September 28, 2017.

Parent engaged Firm to prepare its consolidated federal income tax return for the A taxable year. Parent advised Firm not to claim the additional first year depreciation under § 168(k) for any class of qualified property placed in service by Taxpayers in the A taxable year.

On Parent's consolidated federal income tax return for the A taxable year, the additional first year depreciation was not claimed for all classes of qualified property placed in service by Taxpayers. However, due to an inadvertent error, the statement indicating Taxpayers elected under § 168(k)(7) to forgo the additional first year depreciation deduction was not attached to Parent's consolidated federal income tax return for the A taxable year.

Parent did not make an election under § 168(k)(4) to accelerate alternative minimum tax credits in lieu of the additional first year depreciation deduction for the A taxable year.

## RULING REQUESTED

On behalf of Taxpayers, Parent requests an extension of time to make an election under § 168(k)(7) not to deduct the additional first year depreciation under § 168(k) for the 3-year, 5-year, 7-year, and 15-year property placed in service by Taxpayers during the taxable year ended Date 1, 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, an additional first year depreciation deduction for qualified property placed in service by the taxpayer before January 1, 2020 (or January 1, 2021, for property described in §§ 168(k)(2)(B) or 168(k)(2)(C)). Pursuant to § 168(k)(1)(A) and (6), the additional first year depreciation deduction percentage was 50 percent for qualified property placed in service in 2017 (in 2018 for property described in § 168(k)(2)(B) or (C)) and 40 percent for qualified property placed in service in 2018 (in 2019 for property described in § 168(k)(2)(B) or (C)).

Section 168(k)(7) allows a taxpayer to elect out of additional first year depreciation for any class of property placed in service during the taxable year (the § 168(k)(7) election). Because the qualified property placed in service by Taxpayers during the A taxable year is not subject to § 168(k) as amended by the TCJA, the procedures in Rev. Proc. 2017-33, 2017-19 I.R.B. 1236, 1240, for making the § 168(k)(7) election apply.

Section 4.04 of Rev. Proc. 2017-33 provides guidance regarding 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 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 rules generally similar to the rules in § 1.168(k)-1(e)(2), (3), (5) and (7) of the Income Tax Regulations apply for purposes of § 168(k)(7).

Sections 1.168(k)-1(e)(2) defines the term "class of property" as meaning, among other things, each class of property described in § 168(e) (for example, 5-year property).

Sections 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.

Sections 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 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(a), 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 rules for requesting extensions of time for regulatory 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 that granting 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, on behalf of Taxpayers, Parent is granted an extension of 60 calendar days from the date of this letter ruling to make the election not to deduct the additional first year depreciation deduction under § 168(k) for 3-year, 5-year, 7-year, and 15-year property placed in service by Taxpayers in 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 Taxpayers are electing not to deduct the additional first year depreciation for their 3-year, 5-year, 7-year, and 15-year property placed in service during that taxable year.

Except as specifically set forth 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 (1) whether any item of depreciable property placed in service by Taxpayers in the A taxable year is eligible for the additional first year depreciation deduction under § 168(k), or (2) whether Taxpayers' classifications of any item of depreciable property under § 168(e) or Rev. Proc. 87-56, 1987-2 C.B. 674, are correct.

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

Sincerely,

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

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

cc: