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April 30, 2024

LEGEND

Taxpayer	=	
New Parent	=	
Year1	=	
Year2	=	
Firm	=	
Date1	=	
Date2	=	
Date3	=	
Date4	=	
Date5	=	

Dear :

This letter ruling responds to a letter dated October 13, 2023, and supplemental correspondence submitted, by Taxpayer, requesting an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make: (1) elections under § 59(e)(1) of the Internal Revenue Code to deduct research and experimental expenditures incurred by Taxpayer in Year1, and Year2, ratably over a 10-year period, (2) elections under § 168(k)(7) not to deduct additional first year depreciation under § 168(k) for all classes of qualified property that were placed in

service by Taxpayer in Year1, and Year2, (3) elections under § 168(b)(5) to use the straight line method of depreciation for all classes of property placed in service by Taxpayer in Year1, and Year2, and (4) elections under § 1.1502-21(b)(3)(i) of the Income Tax Regulations to relinquish the entire carryback periods for the Taxpayer consolidated group's consolidated net operating losses (each, a "CNOL") for Year1, and Year2. Hereinafter, these four elections for Year 1, and Year 2, are collectively referred to as the "Elections."

All references in this letter ruling to § 168(k) are treated as a reference to § 168(k) as in effect after amendment by Public Law 115-97, 131 Stat. 2054 (Dec. 22, 2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA). Further, all references in this letter ruling to § 1.168(k)-2 are treated as a reference to the final regulations under § 1.168(k)-2 that were published on September 24, 2019, in the Federal Register (84 FR 50108). Pursuant to § 1.168(k)-2(h)(1)(i), § 1.168(k)-2 applies to qualified property under § 168(k)(2) that is placed in service during or after the taxpayer's taxable year that includes September 24, 2019.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer, a C corporation, was the common parent of an affiliated group of corporations that filed a consolidated federal income tax return on a calendar year basis for Year1, and Year2, on Form 1120, *U.S. Corporation Income Tax Return* (the "Taxpayer Group"). Taxpayer's overall method of accounting is an accrual method. For Year1, and Year2, Taxpayer intended to make the Elections.

Taxpayer engaged Firm to prepare its consolidated federal income tax returns for Year1, and Year2, and Taxpayer relied on Firm to prepare and timely file Taxpayer's consolidated federal income tax returns for Year1, and Year2. The due dates (with extensions) of Taxpayer's consolidated federal income tax returns for Year1, and Year2, were Date1, and Date4, respectively.

On Date1, Firm had not completed preparation of Taxpayer's consolidated federal income tax return for Year1, and Firm advised Taxpayer to file its consolidated federal income tax return late. When providing this advice, Firm failed to advise Taxpayer that the Elections were required to be made by the due date (including extensions) of the consolidated federal income tax return and that, accordingly, the Elections would be invalid. Taxpayer filed its consolidated federal income tax return for Year1, on Date2, which date was after Date1.

For Year2, Firm did not provide Taxpayer's consolidated federal income tax return for Taxpayer's review or signature until Date4, the extended due date for filing the consolidated federal income tax return for Year2. Taxpayer's employee who normally signed the consolidated federal income tax return was on leave on Date4, and

Taxpayer's employee to whom Firm's email communication was directed was traveling for work and did not see the message until after the deadline had passed. Furthermore, Firm again failed to advise Taxpayer that the Elections were required to be made by the due date (including extensions) of the consolidated federal income tax return and that, accordingly, the Elections would be invalid. Taxpayer's consolidated federal income tax return for Year2 was filed on Date5, which date was after Date4.

The Taxpayer Group incurred a CNOL during each of Year1, and Year2. Taxpayer has represented that the Taxpayer Group has not carried back, and will not carry back, any portion of the CNOL for Year1, or Year2, to a prior consolidated return year of the Taxpayer Group. Taxpayer has also represented that no corporation in the Taxpayer Group had a separate return year within the meaning of § 1.1502-1(e) during the carryback period. Hence, no portion of either CNOL for Year1, and Year2, has been carried back, or will be carried back, to a separate return year (within the meaning of § 1.1502-1(e)) of any corporation that was a member of the Taxpayer Group at any time during Year1, or Year2.

Taxpayer has further represented that Taxpayer is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662.

On the consolidated federal income tax returns for Taxpayer with respect to each of Year1, and Year2: (1) Taxpayer attached statements and reported deductions for amortization consistent with elections under § 59(e)(2)(B), (2) Taxpayer attached statements and did not claim any additional first year depreciation for all classes of qualified property placed in service in Year1, and Year2, consistent with elections under § 168(k)(7), (3) Taxpayer attached statements consistent with elections under § 168(b)(5) and used the straight line method of depreciation for all classes of property placed in service in Year1, and Year2, and (4) Taxpayer attached statements consistent with elections under § 1.1502-21(b)(3)(i) to relinquish the entire carryback period for the Taxpayer Group's CNOL for Year1, and Year2. However, because Taxpayer did not timely file its consolidated federal income tax returns for Year1, and Year2, Taxpayer failed to make any of the Elections for Year1, and Year2.

New Parent acquired Taxpayer in a stock acquisition on Date3. After its acquisition of Taxpayer, New Parent discovered that Taxpayer failed to make the Elections for Year1, and Year2.

Taxpayer has represented that, in requesting an extension of time to make the Elections for Year1, and Year2, it acted reasonably and in good faith and, further, the interests of the Government are not prejudiced by the granting of the relief requested.

RULING REQUESTED

Accordingly, Taxpayer requests an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 to make: (1) the election under § 59(e) to deduct ratably over a 10-year period the research and experimental expenditures described in § 174(a) that were paid or incurred by Taxpayer in Year1, and Year2, (2) the election under § 168(k)(7) not to deduct the additional first year depreciation under § 168(k) for all classes of property that are qualified property and that were placed in service by Taxpayer during Year1, and Year2, (3) the election under § 168(b)(5) to use the straight line method of depreciation for all classes of property placed in service by Taxpayer in Year1, and Year2, and (4) the election under § 1.1502-21(b)(3)(i) to relinquish the entire carryback period for the Taxpayer Group's CNOL for each of Year1, and Year2.

LAW AND ANALYSIS

Elections under § 59(e)

For amounts paid or incurred in taxable years beginning prior to 2022, § 174(a) provides, in general, that a taxpayer may treat research and experimental expenditures that are paid or incurred by the taxpayer during the taxable year in connection with the taxpayer's trade or business as expenses which are not chargeable to capital account. The expenditures so treated are allowed as a deduction.

Section 59(e)(1) allows a taxpayer to deduct ratably over a 10-year period any qualified expenditure to which an election under § 59(e)(1) applies beginning with the taxable year in which such expenditure was made.

Section 59(e)(2)(B) includes in the definition of "qualified expenditure" any amount which, but for an election under § 59(e), would have been allowable as a deduction for the taxable year in which paid or incurred under § 174(a) (relating to research and experimental expenditures).

Section 59(e)(3) specifically prohibits the deduction of the qualified expenditures under any other section of the Code if this option is elected.

Section 59(e)(4)(A) provides that an election under § 59(e)(1) may be made with respect to any portion of any qualified expenditure.

Section 59(e)(4)(B) provides that an election made under § 59(e) may be revoked only with the consent of the Secretary.

Section 1.59-1(b)(1) provides that an election under § 59(e) shall only be made by attaching a statement to the taxpayer's income tax return (or amended return) for the taxable year in which the amortization of the qualified expenditures subject to the § 59(e) election begins. The statement must be filed no later than the date prescribed

by law for filing the taxpayer's original income tax return (including any extensions of time) for the taxable year in which the amortization of the qualified expenditures subject to the § 59(e) election begins. Additionally, the statement must include the taxpayer's name, address, and taxpayer identification number, and the type and amount of qualified expenditures identified in § 59(e)(2) that the taxpayer elects to deduct ratably over the applicable period described in § 59(e)(1).

Elections under § 168(k)(7)

Section 168(k)(1) allows, in the taxable year that qualified property is placed in service, a 100-percent additional first year depreciation deduction for qualified property placed in service by the taxpayer during Year1, or Year2.

Section 168(k)(7) allows a taxpayer to elect out of additional first year depreciation for any class of property placed in service during a taxable year.

For property acquired after September 27, 2017, § 1.168(k)-2(f)(1) provides the rules for making the § 168(k)(7) election. Section 1.168(k)-2(f)(1)(i) provides that if this election is made, 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 1.168(k)-2(f)(1)(ii) defines the term "class of property" as meaning, among other things, each class of property described in § 168(e) (for example, 5-year property).

Section 1.168(k)-2(f)(1)(iii) provides the time and manner of making the § 168(k)(7) election.

Section 1.168(k)-2(f)(1)(iii)(A) provides that the election not to deduct the 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 qualified property is placed in service by the taxpayer.

Section 1.168(k)-2(f)(1)(iii)(B) provides that the election not to deduct the 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 Year1, and Year2, 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.

Elections under § 168(b)(5)

Section 167(a) provides that there shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear, and tear (including a reasonable allowance for obsolescence) of property used in a taxpayer's trade or business.

The depreciation deduction provided by § 167(a) for tangible property placed in service after 1986 generally is determined under § 168. This section prescribes two methods of determining depreciation allowances. One method is the general depreciation system in § 168(a) and the other method is the alternative depreciation system in § 168(g). Under either depreciation system, the depreciation deduction is computed by using an applicable depreciation method, recovery period, and convention.

Section 168(b) prescribes depreciation methods for purposes of the general depreciation system of § 168(a). Section 168(b)(1) states that except as provided in § 168(b)(2) and (3), the applicable depreciation method is the 200-percent declining balance method, switching to the straight line method for the first taxable year for which using the straight line method with respect to the adjusted basis as of the beginning of such year will yield a larger allowance.

Section 168(b)(3)(D) provides that the applicable depreciation method is the straight line method for property with respect to which the taxpayer elects under § 168(b)(5) to have the provisions of § 168(b)(3) apply.

Section 168(b)(5) provides that an election under § 168(b)(3)(D) may be made with respect to one or more classes of property for any taxable year and once made with respect to any class shall apply to all property in such class placed in service during such taxable year. Such an election, once made, is irrevocable.

Section 301.9100-7T(a)(1) of the temporary Income Tax Regulations applies to elections provided under the Tax Reform Act of 1986, including the election under § 168(b)(5). Section 301.9100-7T(a)(1) provides that such election must be made for the taxable year in which the property is placed in service. Section 301.9100-7T(a)(2) provides that the time for making such election is the due date, taking extensions into account, of the tax return for the first taxable year for which the election is to be effective. Section 301.9100-7T(a)(3) provides that unless otherwise provided, such election is made by attaching a statement to the tax return for the taxable year for which the election is to be effective. Except as otherwise provided in the return or in the instructions accompanying the return for the taxable year, the statement shall contain the name, address, and taxpayer identification number of the electing taxpayer, identify the election, indicate the section of the Code under which the election is made, specify, as applicable, the period for which the election is being made and/or the property or other items to which the election is to apply, and provide any information required by the relevant statutory provisions and any information necessary to show that the taxpayer is entitled to make the election.

While the instructions to Form 4562 for Year1, and Year2, provide that a taxpayer can make an irrevocable election to use the straight line method for all property within a classification that is placed in service during the taxable year, the instructions do not specifically state how to make such election.

Elections under § 1.1502-21(b)(3)(i)

Section 1.1502-21(b)(3)(i) provides that a consolidated group may make an irrevocable election under § 172(b)(3) to relinquish the entire carryback period with respect to a CNOL for any consolidated return year. The election is made in a separate statement entitled "THIS IS AN ELECTION UNDER § 1.1502-21(b)(3)(i) TO WAIVE THE ENTIRE CARRYBACK PERIOD PURSUANT TO SECTION 172(b)(3) FOR THE [insert consolidated return year] CNOLs OF THE CONSOLIDATED GROUP OF WHICH [insert name and employer identification number of common parent] IS THE COMMON PARENT." Section 1.1502-21(b)(3)(i) also provides that the statement must be filed with the group's income tax return for the consolidated return year in which the loss arises.

Requests for Relief under §§ 301.9100-1 and 301.9100-3

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.

Section 301.9100-1(b) provides that the term "regulatory election" includes an election whose due date is prescribed by a regulation published in the Federal Register.

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 the rules governing automatic extensions of time for making certain elections. Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension 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.

CONCLUSIONS

Based solely on the facts submitted and representations made by Taxpayer, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Taxpayer is granted an extension of time to make: (1) the election under § 59(e) to deduct ratably over a 10-year period the research and experimental expenditures described in § 174(a) that were paid or incurred by Taxpayer in Year1, and Year2, (2) the election under § 168(k)(7) not to deduct the additional first year depreciation under § 168(k) for all classes of property that are qualified property and that were placed in service by Taxpayer during Year1, and Year2, (3) the election under § 168(b)(5) to use the straight line method of depreciation for all classes of property placed in service by Taxpayer in Year1, and Year2, and (4) the election under § 1.1502-21(b)(3)(i) to relinquish the entire carryback period for the Taxpayer Group's CNOL for each of Year1, and Year2. In this regard, we will consider these Elections made by Taxpayer on its consolidated federal income tax returns for Year1, and Year2, which were filed on Date2 and Date 5, respectively, to have been timely made.

The above extension of time is conditioned on Taxpayer's tax liability (if any) being not lower, in the aggregate, for all years to which the Elections apply, than it would have been if the Elections had been timely made (taking into account the time value of money). No opinion is expressed as to Taxpayer's tax liability for the years involved. A determination thereof will be made by the applicable Director's office upon audit of the consolidated federal income tax returns involved.

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: (1) whether any item of depreciable property placed in service by Taxpayer in Year1, and Year2, is eligible for the additional first year depreciation deduction under § 168(k), (2) whether Taxpayer's classification of any item of depreciable property under § 168(e) or Rev. Proc. 87-56, 1987-2 C.B. 674, is correct, or (3) whether Taxpayer accurately computed the deductions it claimed for depreciation for Year1, and Year2. Furthermore, we express or imply no opinion as to whether Taxpayer satisfies the requirements of §§ 59(e) and 174(a).

Further, this letter ruling does not grant an extension of time for filing Taxpayer's consolidated federal income tax return for Year1, and Year2.

The rulings contained in this letter are based solely upon the information and representations submitted by Taxpayer and accompanied by a statement under penalty of perjury, executed by an appropriate party. While this office has not verified any of the information submitted in support of the requested ruling, the information is subject to verification upon examination.

This 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 on file with this office, a copy of this letter is being sent to your authorized representatives. We are also sending a copy of this letter to the appropriate operating division director.

Sincerely yours,

Charles J. Magee

Charles J. Magee
Senior Counsel, Branch 7
(Income Tax & Accounting)

Enclosures (2):

copy of this letter
copy for section 6110 purposes

cc: