Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:ITA:7
PLR-126745-10

Date:
November 19, 2010

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

Parent =

Subsidiary =
Company 1 =
Company 2 =
A =
Date 1 =
Date 2 =
Date 3 =
LB&I Official =

Dear :

This letter responds to a letter dated June 22, 2010, and subsequent correspondence, submitted by Parent on behalf of itself, Subsidiary, Company 1, and Company 2. Hereinafter, these companies will be referred to collectively as "Taxpayer." Taxpayer requests 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 all classes of qualified property placed in service in the taxable year ended Date 1 (the A taxable year).

FACTS

Parent represents that the facts are as follows:

Taxpayer is in the business of providing cable television service and has a calendar year for its taxable year. Taxpayer's overall method of accounting is the accrual method.

Parent is the common parent of an affiliated group of corporations, including Subsidiary, that file a consolidated federal income tax return. Parent timely filed its consolidated federal income tax return for the taxable year ended Date 1, on Date 2. Company 1 and Company 2 are limited liability companies that are treated as partnerships for federal income tax purposes. Company 1 and Company 2 timely filed their federal partnership tax returns for the taxable year ended Date 1, on Date 3. Taxpayer prepared these tax returns.

On these returns, Taxpayer did not claim the additional first year depreciation deduction for all classes of qualified property placed in service by Taxpayer during the A taxable year. Taxpayer, however, inadvertently failed to attach the election statement to the federal tax returns for the A taxable year with respect to all classes of qualified property.

RULING REQUESTED

Taxpayer requests 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) for all classes of qualified property placed in service by Taxpayer in the taxable year ended Date 1.

LAW AND ANALYSIS

Section 168(k)(1) (as amended by the Economic Stimulus Act of 2008, Pub. L. No. 110-185, 122 Stat. 613 (February 13, 2008)) provides a 50-percent additional first year depreciation deduction for qualified property acquired and placed in service during 2008.

Section 168(k)(2)(D)(iii) provides that a taxpayer may elect not to deduct the 50-percent 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) of the Income Tax Regulations 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, 2008-38 I.R.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.

CONCLUSIONS

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 all classes of property placed in service by Taxpayer during the taxable year ended Date 1, that qualify for the additional first year depreciation. This election must be made by: (1) Parent filing an amended consolidated federal income tax return for the taxable year ended Date 1, with a statement indicating that Parent and Subsidiary are electing not to deduct the additional first year depreciation for all classes of property placed in service by Parent and Subsidiary during that taxable year; (2) Company 1 filing an amended federal partnership tax return for the taxable year ended Date 1, with a statement indicating that Company 1 is electing not to deduct the additional first year depreciation for all classes of property placed in service by Company 1 during that taxable year; and (3) Company 2 filing an amended federal partnership tax return for the taxable year ended Date 1, with a statement indicating that Company 2 is electing not to deduct the additional first year depreciation for all classes of property placed in service by Company 2 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. Specifically, no opinion is expressed or implied on whether any

item of depreciable property placed in service by Taxpayer during the taxable year ended Date 1, is eligible for the additional first year depreciation deduction.

In accordance with the power of attorney, we are sending a copy of this letter to Taxpayer's authorized representatives. We are also sending a copy of this letter to the appropriate LB&I Official.

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.

Sincerely,

Kathleen Reed

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

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