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
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Date:
December 14, 2011

Re: Request to Revoke the Election Not to Deduct the Additional First Year Depreciation

Legend

Taxpayer =

Date 1 =

Date 2 =

A =

B =

C =

Dear :

This letter responds to a letter dated June 30, 2011, requesting the consent of the Commissioner of Internal Revenue to revoke Taxpayer's election under § 168(k)(2)(D)(iii) of the Internal Revenue Code not to deduct any 50-percent additional first year depreciation that was made on its federal tax returns for the taxable year ended Date 1 (the A taxable year).

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is a C corporation that uses the accrual method of accounting and has a fiscal year ending on the last Sunday in January. Taxpayer is the common parent of a group of corporations that elected, under §1501, to file a consolidated returns for federal income tax purposes. Taxpayer's subsidiaries, together with Taxpayer, are a controlled group as detailed in § 4.02 of Rev. Proc. 2008-65, 2008-2 C.B. 1082 (2008). Taxpayer is engaged in the information technology industry.

Since B, Taxpayer has been in a loss position and, thus, has historically elected to forgo the additional first year depreciation for all eligible classes of property placed in service during the relevant taxable years pursuant to §168(k)(2)(D)(iii).

Taxpayer relied upon C, a qualified tax professional, to prepare its federal tax returns for the A taxable year. During this taxable year, Taxpayer placed in service qualified property (as defined in § 168(k)(2) before the application of § 168(k)(2)(D)(iii)). However, on its federal income tax return for the A taxable year, Taxpayer made an election under § 168(k)(2)(D)(iii) not to deduct the Stimulus additional first year depreciation deduction for all eligible classes of property placed in service between Date 1 and Date 2 during the A taxable year.

On its federal tax return for the A taxable year, Taxpayer also made an election to apply § 168(k)(4) and, as a result, Taxpayer claimed refundable tax credits for unused research tax credits. Taxpayer's tax director was not aware of the ordering rules for applying elections under § 168(k) as provided by section 4.04 of Rev. Proc. 2008-65, 2008-44 I.R.B. 1082, which was issued before Date 1, and instead relied upon C, its qualified tax professional, to prepare its tax return completely, including required forms consistent with reporting methodologies. Due to an oversight by C, the election under § 168(k)(2)(D)(iii) was inadvertently made.

RULING REQUESTED

Taxpayer requests consent to revoke its § 168(k)(2)(D)(iii) election not to deduct the Stimulus additional first year depreciation for all qualified property placed in service during the fiscal taxable year ended Date 1, pursuant to § 1.168(k)-1(e)(7)(i) of the Income Tax Regulations.

LAW AND ANALYSIS

Section 168(k)(1), amended by § 103 of the Economic Stimulus Act of 2008, Pub. L. No. 110-185, 122 Stat. 613 (February 13, 2008) (Stimulus Act), by § 1201(a)(1) of the American Recovery and Reinvestment Tax Act of 2009, Div. B of Pub. L. No. 111-5, 123 Stat. 115 (February 17, 2009), and by § 2022(a) of the Small Business Jobs Act of 2010, Pub. L. No. 111-240, 124 Stat. 2504 (September 27, 2010), allows a 50-percent additional first year depreciation deduction (Stimulus additional first year

depreciation deduction) for the taxable year in which qualified property acquired by a taxpayer after 2007 is placed in service by the taxpayer before 2011 (before 2012 in the case of property described in § 168(k)(2)(B) or (C)).

Section 5.01 of Rev. Proc. 2008-54, 2008-33 I.R.B. 722, provides that for purposes of the Stimulus additional first year depreciation deduction, rules similar to the rules in § 1.168(k)-1 of the Income Tax Regulations for "qualified property" or for "30-percent additional first year depreciation deduction" apply. However, in applying § 1.168(k)-1(d)(1)(i), the computation of the allowable Stimulus additional first year depreciation deduction is made in accordance with the rules for 50-percent bonus depreciation property.

Section 168(k)(2)(D)(iii) provides that a taxpayer may elect not to deduct the Stimulus 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).

Section 1.168(k)-1(e)(7)(i) provides that an election not to deduct the additional first year depreciation for a class of property that is qualified property, once made, may be revoked only with the written consent of the Commissioner of Internal Revenue. To seek the Commissioner's consent, the taxpayer must submit a request for a letter ruling.

CONCLUSIONS

Based solely on the facts and representations submitted, we conclude that a revocation of Taxpayer's election not to deduct any Stimulus additional first year depreciation for all eligible classes of property placed in service by Taxpayer in the taxable year ended Date 1, is permitted under § 1.168(k)-1(e)(7)(i). Accordingly, Taxpayer is granted 60 calendar days from the date of this letter to revoke its election not to deduct any Stimulus additional first year depreciation for all eligible classes of property placed in service by Taxpayer in the taxable year ended Date 1. The revocation must be made in a written statement filed with Taxpayer's amended federal tax return for the taxable year ended Date 1. In addition, a copy of this letter must be attached to such amended return. A copy is enclosed for that purpose.

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 the A taxable year is eligible for the Stimulus additional first year depreciation deduction under § 168(k)(1) or is eligible qualified property for purposes of § 168(k)(4), or (2) whether Taxpayer's determination of the refundable tax credits under § 168(k)(4) is proper.

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

Sincerely,

Willie E. Armstrong, Jr.

Willie E. Armstrong, Jr.
Senior Technical Reviewer, Branch 7
Office of Associate Chief Counsel
(Income Tax and Accounting)

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