Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

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CC:ITA:B07
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Date:
February 13, 2012

Legend

Taxpayer	=	
Date1	=	
Date2	=	
Date3	=	
Date 4		
$a	=	
$b	=	

Dear :

This letter responds to a letter dated August 19, 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 (Stimulus additional first year depreciation) that was made on Taxpayer's federal income tax return for the taxable year ended Date1.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is a C corporation and has a calendar year end. Taxpayer uses an overall accrual method of accounting. Taxpayer is engaged in the business of researching, developing, and manufacturing drugs.

Between Date2, and Date3, Taxpayer placed in service $a of qualified property (as defined in § 168(k)(2) before the application of § 168(k)(2)(D)(iii)). Between Date4

(a date before Date1) and Date1, Taxpayer placed in service $b of qualified property. On its federal income tax return for the taxable year ended Date1, Taxpayer made an election under § 168(k)(2)(D)(iii) not to deduct the Stimulus additional first year depreciation for all property placed in service in the taxable year ended Date1. However, Taxpayer also made an election to apply § 168(k)(4) for all eligible qualified property placed in service between Date4, and Date1.

Taxpayer used an outside tax preparer to prepare its federal income tax return for the taxable year ended Date1. The outside tax preparer represents that the election statement to forego the Stimulus additional first year depreciation under § 168(k)(2)(D)(iii) was inadvertently attached to Taxpayer's federal income tax return for the taxable year ended Date1 because, historically, Taxpayer has made such an election. As a result of inadvertently attaching the § 168(k)(2)(D)(iii) election statement to the federal income tax return for the taxable year ended Date1, Taxpayer did not have any eligible qualified property for purposes of the § 168(k)(4) election.

RULING REQUESTED

Taxpayer requests consent to revoke its election under § 168(k)(2)(D)(iii) not to deduct the Stimulus additional first year depreciation for all qualified property placed in service during the taxable year ended Date1.

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), 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 2009 (before 2010 in the case of property described in § 168(k)(2)(B) or (C)).

Section 3081(a) of the Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654 (July 30, 2008) (Housing Act), amended § 168(k) by adding § 168(k)(4) to the Code. Section 168(k)(4)(A) provides that a corporation may elect to apply § 168(k)(4) (the § 168(k)(4) election). If the corporation makes the § 168(k)(4) election, § 168(k)(4)(A) further provides that for the corporation's first taxable year ending after March 31, 2008, and for each subsequent taxable year, the corporation forgoes the additional first year depreciation deduction allowable under § 168(k) for eligible qualified property placed in service by the taxpayer. The § 168(k)(4) election also requires that the taxpayer use the straight line method of depreciation as the applicable depreciation method for all eligible qualified property, and increase its business credit limitation under § 38(c) and the alternative minimum tax (AMT) credit limitation under § 53(c) by the bonus depreciation amount (as defined in § 168(k)(4)(C) and as determined under section 5 of Rev. Proc. 2008-65, 2008-44 I.R.B. 1082) that is

determined for that taxable year and allocated to such limitation. Specifically, § 168(k)(4)(E)(iii) and (iv) provides, in general, that the corporation will be able to claim unused credits from taxable years beginning before January 1, 2006, that are allocable to research expenditures or AMT liabilities.

Section 4.04 of Rev. Proc. 2008-65 provides that if a taxpayer makes both the § 168(k)(2)(D)(iii) election and the election to apply § 168(k)(4) for all eligible qualified property, the taxpayer must apply § 168(k)(2)(D)(iii) first. Any class of property (as defined in § 1.168(k)-1(e)(2) of the Income Tax Regulations) for which a § 168(k)(2)(D)(iii) election has been made is not qualified property under § 168(k)(2) nor eligible qualified property under § 168(k)(4).

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.

CONCLUSION

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 Date1, 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 Date1. The revocation must be made in a written statement filed with Taxpayer’s amended federal income tax return for the taxable year ended Date1. In addition, a copy of this letter must be attached to such amended return. A copy is enclosed for this 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. Specifically, no opinion is expressed or implied on (1) whether any item of depreciable property placed in service by Taxpayer in the taxable year ended Date1, is eligible for the Stimulus additional first year depreciation deduction under § 168(k)(1), or is eligible qualified property under § 168(k)(4), (2) whether Taxpayer has properly made the § 168(k)(4) election for the taxable year ended Date1, pursuant to Rev. Proc. 2009-16, 2009-6 I.R.B. 449, or (3) whether Taxpayer’s determination of the refundable tax credits under § 168(k)(4) is proper.

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 our office, 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 Industry Director, LB&I.

Sincerely,

Kathleen Reed

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

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