

Internal Revenue Service

Number: **201649001**

Release Date: 12/2/2016

Index Number: 9100.04-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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CC:ITA:B07

PLR-106847-16

Date: August 25, 2016

In re: Request For An Extension Of Time To Make the Election Not to Deduct the Additional First Year Depreciation

LEGEND:

Parent =

S1=

S2=

S3=

S4=

S5=

State A =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Year 7 =

Business X =

Dear :

This letter responds to a letter dated February 26, 2016, and supplemental correspondence, submitted by Parent on behalf of itself and S1, S2, S3, S4, and S5 (hereinafter collectively referred to as Taxpayer) requesting 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 deduction under §§ 168(k)(1) and 168(k)(5) of the Internal Revenue Code for certain classes of qualified property

placed in service by Taxpayer during the taxable years Year 1, Year 2, Year 3, Year 4, Year 5, Year 6, and Year 7.

All references in this letter ruling to § 168(k) are treated as a reference to § 168(k) as in effect on the day before the date of the enactment 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).

FACTS

Parent is a State A corporation and the common parent of an affiliated group of corporations that includes S1, S2, S3, S4, and S5. The affiliated group of corporations files a consolidated federal income tax return on a calendar-year basis. Taxpayer is engaged in Business X. As of the date of filing this letter ruling request, Taxpayer's taxable year Year 1 is a taxable year for which the period of limitation on assessment under § 6501(a) has expired.

Taxpayer placed in service qualified property (as defined in § 168(k)(2)) that is 3-year, 5-year, 7-year, or 15-year property during the taxable years Year 1, Year 2, Year 3, Year 4, Year 5, Year 6, and Year 7. For each of these taxable years, Taxpayer decided to make the election under § 168(k)(2)(D)(iii) not to claim the additional first year depreciation under §§ 168(k)(1) or 168(k)(5), as applicable, with respect to each class of qualified property, except for 5-year and 7-year property placed in service during Year 4.

On Parent's timely filed consolidated federal income tax returns for the taxable years Year 1, Year 2, Year 3, Year 4, Year 5, Year 6, and Year 7, Taxpayer did not deduct the additional first year depreciation for all classes of qualified property, except for 5-year and 7-year property placed in service during Year 4 for which the 100-percent additional first year depreciation was claimed. However, Taxpayer inadvertently failed to attach to these returns the required election statement identifying the classes of property subject to the election under § 168(k)(2)(D)(iii).

For the placed-in-service year and each subsequent taxable year, Taxpayer determined the depreciation deduction and the adjusted basis of the qualified property at issue, except for 5-year and 7-year property placed in service during Year 4, as if the election under § 168(k)(2)(D)(iii) had been made with respect to the classes of property at issue.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to § 301.9100-3 to make the election under § 168(k)(2)(D)(iii) to not deduct the additional first year depreciation

under §§ 168(k)(1) or 168(k)(5), as applicable, for all classes of qualified property placed in service by Taxpayer during the taxable years Year 1, Year 2, Year 3, Year 4, Year 5, Year 6, and Year 7, except for 5-year and 7-year property placed in service during Year 4.

LAW AND ANALYSIS

Section 168(k)(1) allows, in the taxable year that qualified property is placed in service, a 50-percent additional first year depreciation deduction for qualified property (i) acquired by a taxpayer after December 31, 2007, and before September 9, 2010, or after December 31, 2011 (or December 31, 2012, for qualified property described in §§ 168(k)(2)(B) or 168(k)(2)(C)) and before January 1, 2015, and (ii) placed in service by the taxpayer before September 9, 2010, or after December 31, 2011 (or December 31, 2012, for qualified property described in §§ 168(k)(2)(B) or 168(k)(2)(C)) and before January 1, 2015 (or January 1, 2016, for qualified property described in §§ 168(k)(2)(B) or 168(k)(2)(C)) .

Section 168(k)(5) provides a 100-percent additional first year depreciation deduction in the placed-in-service year for qualified property acquired by a taxpayer after September 8, 2010, and generally before January 1, 2012, and placed in service by the taxpayer after September 8, 2010, and generally before January 1, 2012. See section 3 of Rev. Proc. 2011-26, 2011-16 I.R.B. 664, 665.

Section 168(k)(2)(D)(iii) provides that a taxpayer may elect not to deduct the 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, 2008-2 C.B. 722, and section 3.01 of Rev. Proc. 2011-26, 2011-16 I.R.B. at 665 (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 years Year 1, Year 2, Year 3, Year 4, Year 5, Year 6, and Year 7 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 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 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 years Year 1, Year 2, Year 3, Year 4, Year 5, Year 6, and Year 7, that qualify for the additional first year depreciation deduction, other than the 5-year and 7-year property placed in service in Year 4. This election must be made by Parent: (i) filing an amended consolidated federal tax income tax return for each such taxable year that is an open taxable year as of the date provided in the preceding sentence, with a written statement indicating that Taxpayer is electing not to deduct the additional first year depreciation and identifying the class(es) of property for which the election is made; and (ii) filing such written statement with the IRS office where Parent filed its original consolidated federal income tax return(s) for any taxable year(s) at issue that is a closed taxable year(s) as of the date provided in the preceding sentence.

A copy of this letter ruling must be attached to any federal income tax return to which it is relevant or to the written statement, as applicable. A copy is enclosed for that purpose. Alternatively, a taxpayer filing its federal income tax return electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of the letter ruling.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal 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 whether any item of depreciable property placed in service by

Taxpayer during the taxable years at issue is eligible for the additional first year depreciation deduction.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer 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 representative. We also are sending a copy of this letter ruling to the appropriate operating division director.

Sincerely,

Kathleen Reed

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

Enclosures (2):

Copy of this letter
Copy for section 6110 purposes