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:B07
PLR-119267-19

Date:
February 13, 2020

LEGEND:

P	=
X1	=
X2	=
X3	=
Taxable Year	=
Countries	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Firm A	=
Firm B	=
Prior Years	=
Year 1	=

Dear :

This letter ruling responds to a letter dated August 5, 2019, and supplemental correspondence, submitted by and on behalf of P and its affiliated entities, X1, X2, and X3 (collectively referred to as "Taxpayer"), requesting an extension of time pursuant to §§ 301.9100-1 and 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 by Taxpayer in the Taxable Year.

All references in this letter to § 168(k) are treated as a reference to § 168(k) as in effect prior to amendment by the Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (December 22, 2017) (TCJA), and after amendment by § 143(b) 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). See § 143(b)(7)(A) of the PATH Act.

FACTS

P represents that the facts are as follows:

P is the common parent of an affiliated group of corporations that includes X1, X2, and X3, and that files a consolidated federal income tax return. Taxpayer uses an accrual method of accounting. Taxpayer is a mining company that owns and operates mines and projects in Countries.

P engaged Firm A to perform income tax compliance services for Prior Years. For most of the years prior to the Taxable Year, Taxpayer has consistently claimed the additional first year depreciation deduction under § 168(k) annually. For the Taxable Year, however, due to large losses incurred by Taxpayer, it chose to make the election under § 168(k)(7) not to deduct the additional first year depreciation. Taxpayer would not be subject to alternative minimum tax with or without the additional first year depreciation deduction.

On Date 1, Firm A provided P with a draft IRS Form 1120 for review which reflected the intention to elect out of the additional first year depreciation. However, Firm A inadvertently failed to attach the required election statement to the draft Form 1120, and P inadvertently failed to notice the absence of the election statement.

On Date 2, Firm A sent to P a filing copy of Form 1120, and this copy was electronically filed timely by P on Date 3. The tax return properly reflected Taxpayer's intention to elect not to deduct additional first year depreciation, but inadvertently did not include the required election statement. Thereafter, while preparing Year 1 year-end tax accrual, Taxpayer's outside tax consultant noticed that the election statement was not attached to P's Form 1120 for the Taxable Year.

On Date 4, P engaged Firm B to provide tax compliance and consulting services. Following a review and investigation into the circumstances of the missed election not to deduct the additional first year depreciation for the Taxable Year, Firm B advised Taxpayer to follow the procedures under § 301.9100-3 of the Procedure and Administration Regulations to request an extension of time to file the election not to deduct the additional first year depreciation for the Taxable Year.

RULING REQUESTED

Accordingly, Taxpayer requests an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make the election not to

deduct the additional first year depreciation under § 168(k)(7) for all classes of property that was placed in service by Taxpayer during the Taxable Year.

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 placed in service by the taxpayer during the Taxable Year.

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

Section 4.04 of Rev. Proc. 2017-33, 2017-19 I.R.B. 1236, 1240, provides guidance regarding the election under § 168(k)(7) not to deduct the additional first year depreciation (the § 168(k)(7) election). Section 4.04(1) of Rev. Proc. 2017-33 provides that the rules for making the § 168(k)(7) election are similar to the rules for making the election under § 168(k)(2)(D)(iii) as in effect before the enactment of the PATH Act. As a result, 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 4.04(2) of Rev. Proc. 2017-33 provides that rules generally similar to the rules in § 1.168(k)-1(e)(2), (3), (5) and (7) of the Income Tax Regulations apply for purposes of § 168(k)(7).

Section 1.168(k)-1(e)(2) defines the term “class of property” as meaning, among other things, each class of property described in § 168(e) (for example, 5-year property). As a result of the amendments to § 168(k) by § 143(b) of the PATH Act, the term “class of property” also includes qualified improvement property as defined in § 168(k)(3) and depreciated under § 168.

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 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.

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.

Under § 301.9100-1(a), 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 rules for requesting extensions 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.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Taxpayer is granted an extension of 60 calendar days from the date of this letter ruling to make the election not to deduct the additional first year depreciation under § 168(k) for all classes of qualified property placed in service during the Taxable Year. This election must be made by P filing an amended consolidated federal income tax return for the Taxable Year, with a statement indicating that Taxpayer is electing not to deduct the additional first year depreciation for all classes of property placed in service by Taxpayer in the Taxable Year.

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 Taxable Year, is eligible for the 50-percent additional first year depreciation deduction under § 168(k) or (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.

The ruling contained in this letter ruling is based upon information and representations submitted by P and accompanied by penalty of perjury statements executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for the ruling, it is subject to verification on 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 ruling is being sent to your authorized representatives. We also are sending a copy of this letter ruling to the appropriate operating division director.

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

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

cc: