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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
PLR-126246-20

Date:
May 14, 2021

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

LEGEND:

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Dear :

This letter ruling responds to a letter dated September 24, 2020, and subsequent correspondence, that was submitted by Parent on behalf of itself and its affiliated entities, S1 through S45 (hereinafter Parent and S1 through S45 are 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 to not deduct additional first year depreciation under § 168(k) of the Internal Revenue Code for all classes of qualified property placed in service by Taxpayer during its taxable year ending on Date1. This letter ruling is being issued electronically in accordance with Rev. Proc. 2020-29, 2020-21 I.R.B. 859. A paper copy will not be mailed.

Unless provided otherwise, all references in this letter ruling to § 168(k) are treated as a reference to § 168(k) as in effect after amendment by the Tax Cuts and Jobs Act, Pub. L. 115-97, 131 Stat. 2054 (December 22, 2017). Further, all references in this letter ruling to § 1.168(k)-2 of the Income Tax Regulations are treated as a reference to the final regulations under § 1.168(k)-2 that were published on September 24, 2019, in the Federal Register (84 FR 50108). Pursuant to § 1.168(k)-2(h)(1)(i), § 1.168(k)-2 applies to qualified property under § 168(k)(2) that is placed in service during or after the taxpayer's taxable year that includes September 24, 2019.

FACTS

Parent represents that the facts are as follows:

Parent is the common parent of an affiliated group of corporations, which includes S1 through S45, that join in filing a consolidated federal income tax return. Taxpayer's annual accounting period is a 52- or 53-week fiscal year ending on the Saturday closest to the last day of Month. Taxpayer's overall method of accounting is the accrual method. Taxpayer is a X.

In its taxable year ending on Date1, Taxpayer placed in service qualified property, as defined in § 168(k)(2). Taxpayer decided to make the election under § 168(k)(7) to forego the additional first year depreciation deduction for all classes of qualified property placed in service during that taxable year.

Parent timely filed its consolidated federal income tax return for the taxable year ending on Date1, on Date2. This tax return properly reflected Taxpayer's decision to elect not to deduct additional first year depreciation for all classes of qualified property. However, Parent inadvertently omitted the required election statement.

After the filing of the consolidated federal income tax return for the taxable year ending on Date1, and during Parent's financial statement audit, Parent's independent financial auditors requested a copy of that tax return's attachment reflecting the election to not deduct the additional first year depreciation deduction. At that point, Parent realized that such election statement was not included with its consolidated federal income tax return for the taxable year ending on Date1.

RULING REQUESTED

Parent requests an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make the election under § 168(k)(7) not to deduct the additional first year depreciation under § 168(k) for all classes of qualified property placed in service by Taxpayer during the taxable year ending on Date1.

LAW

Section 168(k)(1) allows, for the taxable year in which qualified property is placed in service, an additional first year depreciation deduction equal to the applicable percentage of the adjusted basis of that qualified property.

For qualified property acquired by a taxpayer after September 27, 2017, §§ 168(k)(6)(A)(i) and (B)(i) provide that the applicable percentage is 100 percent for qualified property placed in service by the taxpayer after September 27, 2017, and before January 1, 2023 (before January 1, 2024, for qualified property described in § 168(k)(2)(B) and (C)).

Section 168(k)(7) 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. Section 1.168(k)-2(f)(1)(i) provides that if this election is made, the election applies to all qualified property that is in the same class of property and placed in service in the same taxable year, and no additional first year depreciation deduction is allowable for the property placed in service during the taxable year in the class of property, except as provided in § 1.743-1(j)(4)(i)(B)(*1*). The term "class of property" is defined in § 1.168(k)-2(f)(1)(ii) as meaning, among other things, each class of property described in § 168(e) (for example, 5-year property).

Section 1.168(k)-2(f)(1)(iii)(A) 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 qualified property is placed in service by the taxpayer.

Section 1.168(k)-2(f)(1)(iii)(B) 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 Year 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.

Under § 301.9100-1(a), 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 a regulatory 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 making 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 the grant of relief will not prejudice the interests of the government.

CONCLUSION

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 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 by Taxpayer during the taxable year ending Date1. This election must be made by Parent filing an amended consolidated federal income tax return for the taxable year ending Date1, with a statement indicating that Taxpayer is electing not to deduct the additional first year depreciation for all classes of qualified property placed in service by Taxpayer during that taxable year.

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 (1) whether any item of depreciable property placed in service by Taxpayer during the taxable year ending Date1, is eligible for the 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 rulings contained in this letter are based upon information and representations submitted by Parent 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.

A copy of this letter ruling 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.

This letter ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that this ruling may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter ruling to Parent's authorized representative. We are also sending a copy of this letter ruling to the appropriate operating division director.

Sincerely,

Kathleen Reed

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KATHLEEN REED
Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax & Accounting)

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

cc: