



Sub3, Sub4, Sub5, Sub6, and Sub7 (collectively, Taxpayer) requesting an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file a request for an extension of time to make the election not to deduct the additional first year depreciation under § 168(k) of the Internal Revenue Code for all 3 year property, 5 year property, 7 year property, 10 year property, and 15 year property placed in service during Taxable Year. Taxpayer should have made the election on Taxpayer's timely filed Federal income tax return for Taxable Year pursuant to § 1.168(k)-2(f)(1)(iii)(A) and (B) of the Income Tax Regulations. However, Taxpayer was unable to make the election not to deduct the additional first year depreciation because Taxpayer failed to timely file its tax return for Taxable Year. This letter ruling is being issued electronically as permissible under section 7.02(5) of Rev. Proc. 2021-1, 2021-1 I.R.B. 1, 35.

## FACTS

Taxpayer represents that the facts are as follows:

Taxpayer, a C corporation, files a Form 1120, *U.S. Corporation Income Tax Return*, following a Date1 fiscal year end. Taxpayer's overall method of accounting is an accrual method. Taxpayer's primary trade or business is the manufacture and sale of Product.

Taxpayer engaged Firm, an outside tax consulting firm, to prepare and file its Federal income tax return for Taxable Year. Taxpayer intended to make the election under § 168(k) to not claim the additional first year deduction for certain classes of property that taxpayer placed in service during Taxable Year. The due date of Taxpayer's Federal income tax return for the Taxable Year, without extensions, was Date2.

Taxpayer intended to file a Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns* by Date2. During the month preceding Date2, Firm prepared an extension calculation for Taxpayer and recommended that Taxpayer make an advance payment of Amount on or before Date2. The recommended advanced payment was prepared with the assumption that Taxpayer would make the election not to deduct additional first year depreciation for certain classes of property on its tax return for Taxable Year. Prior to Date2, Taxpayer sent an email to Firm authorizing Firm to file Taxpayer's Form 7004 on Taxpayer's behalf. On Date2, Taxpayer made payments of Amount to the Internal Revenue Service consistent with the extension calculation prepared by Firm.

Due to Firm's error, Taxpayer's Form 7004 was not filed on or before Date2. Instead, Firm filed Taxpayer's Form 7004 on Date3, after the original due date of the return. Taxpayer's Form 7004 was rejected via e-file and subsequent paper filing.

Taxpayer electronically filed its Federal income tax return for Taxable Year on Date4. Taxpayer subsequently filed an amended Federal income tax return for Taxable Year on Date5.

Taxpayer has consistently elected not to deduct additional first year depreciation based on the recommendation of Firm during the seven taxable years preceding Taxable Year.

### RULING REQUESTED

Accordingly, Taxpayer requests an extension of time under §§ 301.9100-1 and 301.9100-3 to file the election not to deduct the additional first year depreciation deduction under § 168(k) for all 3 year property, 5 year property, 7 year property, 10 year property, and 15 year property that are qualified property and placed in service by Taxpayer during Taxable Year.

### LAW AND ANALYSIS

Sections 168(k)(1) and (6) allow, in the taxable year that qualified property is placed in service, a 100-percent additional first year depreciation deduction for qualified property acquired by the taxpayer after September 27, 2017, and placed in service by the taxpayer after September 27, 2017, and before January 1, 2023 (or before January 1, 2024 for qualified property described in § 168(k)(2)(B) or (C)).

Section 168(k)(7) provides that a taxpayer may make an election not to deduct the additional first year depreciation for any class of property that is qualified property placed in service during the taxable year (the § 168(k)(7) election). Section 1.168(k)-2(f)(1)(i) of the Income Tax Regulations provides that 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 1.168(k)-2(f)(1)(ii) defines “class of property” for purposes of the § 168(k)(7) election as meaning each class of property described in § 1.168(k)-2(f)(1)(ii)(A)-(G).

Section 1.168(k)-2(f)(1)(iii)(A) provides that the § 168(k)(7) 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)-2(f)(1)(iii)(B) provides that the § 168(k)(7) 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, 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.

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 301.9100-1(c) provides that the Commissioner has the discretion to grant a reasonable extension of time under the rules in §§ 301.9100-1(c) and 301.9100-3 to make certain regulatory elections. Section 301.9100-1(b) defines a regulatory election as an election with a due date prescribed by regulations published in the Federal Register, or in a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

The requested election not to deduct additional first year depreciation is a regulatory election as defined under § 301.9100-1(b) because the due date of the election is prescribed in § 1.168(k)-2(f)(1)(iii)(A). Furthermore, Taxpayer's request must be analyzed under the requirements of § 301.9100-3 because the automatic provisions of § 301.9100-2 are not applicable.

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 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 time to make the election under § 168(k)(7) not to deduct the additional first year depreciation for all 3 year property, 5 year property, 7 year property, 10 year property, and 15 year property placed in service by Taxpayer during Taxable Year, that qualify for the additional first year depreciation deduction. The election must be made by Taxpayer filing an amended Federal tax return for Taxable Year, with a statement indicating that Taxpayer is electing not to deduct the additional first year depreciation for all 3 year property, 5 year property, 7 year property, 10 year property, and 15 year property placed in service during that taxable year.

Except as specifically set forth above, we express no opinion concerning the Federal income 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 Year is eligible for the additional first year depreciation deduction under § 168(k).

Further, this letter ruling does not grant any extension of time for filing Taxpayer's Form 1120 for Taxable Year.

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 Taxpayer's authorized representatives. We are also sending a copy of this letter ruling to the appropriate IRS operating division official.

Sincerely,

EVAN K. HEWITT  
Senior Technician Reviewer, Branch 7  
Office of Associate Chief Counsel  
(Income Tax and Accounting)

Enclosures (2):

copy of this letter  
copy for section 6110 purposes

cc: