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:
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Telephone Number:

Refer Reply To:
CC:PSI:6
PLR-126881-06
Date:
January 04, 2007

Re: Request to revoke the election not to deduct the additional first year depreciation

Taxpayer =
A =
B =
C =
D =
SB/SE Official =

Dear :

This letter responds to a letter dated May 21, 2006, and supplemental correspondence, requesting the consent of the Commissioner of Internal Revenue to revoke Taxpayer's election not to deduct any (both the 30-percent and the 50-percent) additional first year depreciation made on its federal tax returns for the taxable years ended A and B. By letter dated November 6, 2006, Taxpayer modified its initial request by withdrawing the property placed in service for the taxable year ended C from this letter ruling request. Accordingly, this letter ruling only applies to property for which Taxpayer seeks to revoke its election not to deduct any (either the 30-percent or both the 30-percent and the 50-percent) additional first year depreciation made on its federal tax returns for the taxable years ended A and B.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer, an S-corporation with a taxable year ending D, is a construction contractor involved in the business of crane, rigging and millwright services. For the federal tax returns timely filed for the taxable years ended A and B, Taxpayer made an election under section 168(k) of the Internal Revenue Code not to deduct any (either the 30-percent or both the 30-percent and the 50-percent) additional first year depreciation for all eligible classes of property placed in service during those taxable years.

Taxpayer prepared its federal tax returns for the taxable years ended A and B. Before filing these tax returns, Taxpayer also engaged a qualified tax professional to review the tax returns and associated work papers. During the preparation of these tax returns, Taxpayer's Controller discussed with this tax preparer whether to claim the additional first year depreciation deduction for eligible property. Because the tax returns for the taxable years ended A and B reflected taxable losses, the tax preparer advised Taxpayer's Controller not to claim the additional first year depreciation deduction for all eligible property. Taxpayer relied upon its tax preparer's advice and, consequently, made elections on its federal tax returns for the taxable years ended A and B not to claim the additional first year depreciation deduction for all eligible property placed in service by Taxpayer in such taxable years.

Subsequent to filing Taxpayer's federal tax returns for the taxable years ended A and B, Taxpayer's Controller and the tax preparer discovered that these federal tax returns were prepared incorrectly in that taxable income was significantly under-reported. If the tax preparer had known of the errors, the tax preparer would have advised Taxpayer to claim the additional first year depreciation deduction for all eligible property placed in service by Taxpayer during the taxable years ended A and B.

RULING REQUESTED

Consequently, Taxpayer requests to revoke the election not to deduct any (either the 30-percent or both the 30-percent and the 50-percent) additional first year depreciation made on Taxpayer's federal tax returns for the taxable years ended A and B.

LAW

Section 168(k)(1) provides a 30-percent additional first year depreciation deduction for the taxable year in which qualified property is placed in service by a taxpayer. Section 168(k)(4) provides a 50-percent additional first year depreciation deduction for the taxable year in which 50-percent bonus depreciation property is placed in service by a taxpayer.

Section 168(k)(2)(D)(iii) provides that a taxpayer may elect not to deduct the 30-percent 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.

Section 168(k)(4)(E) provides that a taxpayer may elect to deduct 30-percent, instead of 50-percent, additional first year depreciation for any class of property that is 50-percent bonus depreciation property placed in service during the taxable year. If this election is made, § 1.168(k)-1(e)(1)(ii)(A) provides that the allowable additional first year

depreciation deduction is determined as though the class of property is qualified property under § 168(k)(2). Section 1.168(k)-1(e)(1)(ii)(B) further provides that a taxpayer may elect not to deduct both 30-percent and 50-percent additional first year depreciation for any class of property that is 50-percent bonus depreciation property placed in service during the taxable year.

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 or 50-percent bonus depreciation property placed in service during the taxable year is revocable only with the prior written consent of the Commissioner of Internal Revenue. To seek the Commissioner's consent, the taxpayer must submit a request for a letter ruling. See also section 3.04 of Rev. Proc. 2002-33, 2002-1 C.B. 963.

CONCLUSIONS

Based solely on the facts and representations submitted, we conclude that a revocation of Taxpayer's election not to deduct any (either the 30-percent or both the 30-percent and the 50-percent) additional first year depreciation for all eligible classes of property placed in service by Taxpayer in the taxable years ended A and B 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 (either the 30-percent or both the 30-percent and the 50-percent) additional first year depreciation for all eligible classes of property placed in service by Taxpayer in the taxable years ended A and B. The revocation must be made in a written statement filed with Taxpayer's amended federal tax returns for the taxable years ended on A and B. In addition, a copy of this letter must be attached to such amended returns. Copies are enclosed for that purpose.

Except as specifically ruled upon above, no opinion is expressed or implied concerning the tax consequences of the facts described above. Specifically, no opinion is expressed or implied (1) on whether any item of depreciable property placed in service by Taxpayer in the taxable years ended A and B is eligible for the additional first year depreciation deduction, or (2) if any item of such property is eligible for the additional first year depreciation deduction, whether that item is qualified property as defined in § 168(k)(2) and § 1.168(k)-1 or 50-percent bonus depreciation property as defined in § 168(k)(4)(B) and § 1.168(k)-1.

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.

We are sending a copy of this letter to the SB/SE Official.

Sincerely,

KATHLEEN REED

Kathleen Reed
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (3)
6110 copy
Copies (2) for amended returns