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-132343-10
Date:
October 28, 2010

Re:

Legend

Taxpayer =

Date 1 =

Date 2 =

A =

B =

Dear :

This letter responds to a letter dated August 2, 2010, requesting the consent of the Commissioner of Internal Revenue to revoke Taxpayer's election under § 168(k)(2)(D)(iii) of the Internal Revenue Code not to deduct any 50-percent additional first year depreciation that was made on its federal tax return for the taxable year ended Date 1.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is a C corporation and has a calendar year end. For the taxable year ended Date 1 (the A taxable year), Taxpayer was the common parent of one subsidiary and filed a consolidated federal income tax return with this subsidiary. However, this subsidiary was sold before Date 1, during the A taxable year. Taxpayer is engaged in the information technology industry. Since inception in B, Taxpayer has generated significant net operating losses and general business credit carryforwards.

Taxpayer placed in service qualified property (as defined in § 168(k)(2) before the application of § 168(k)(2)(D)(iii)) during the A taxable year. The qualified property is 3-year or 5-year property. However, on its consolidated federal income tax return for the A taxable year, Taxpayer made an election under § 168(k)(2)(D)(iii) not to deduct the Stimulus additional first year depreciation deduction for all eligible classes of property placed in service during the A taxable year.

For the A taxable year, Taxpayer used an outside tax preparer to prepare its consolidated federal income tax return. This return was timely filed on Date 2. Taxpayer relied upon its tax preparer's advice to make the election not to claim the Stimulus additional first year depreciation for all eligible property placed in service during A. Consequently, Taxpayer made such election on its consolidated federal income tax return for the A taxable year. However, Taxpayer did not consider the consequences of this election with other provisions of the Code, including the election to apply § 168(k)(4). Taxpayer was not aware of the ordering rules for applying elections under § 168(k) as provided by section 4.04 of Rev. Proc. 2008-65, 2008-44 I.R.B. 1082, which was issued before Date 1.

RULING REQUESTED

Taxpayer requests consent to revoke its election not to deduct the Stimulus additional first year depreciation for all qualified property placed in service during the taxable year ended Date 1.

LAW AND ANALYSIS

Section 168(k), amended by § 103 of the Economic Stimulus Act of 2008, Pub. L. No. 110-185, 122 Stat. 613 (February 13, 2008) (Stimulus Act), by § 1201(a)(1) of the American Recovery and Reinvestment Tax Act of 2009, Div. B of Pub. L. No. 111-5, 123 Stat. 115 (February 17, 2009), and by § 2022(a) of the Small Business Jobs Act of 2010, Pub. L. No. 111-240, 124 Stat. 2504 (September 27, 2010), allows a 50-percent additional first year depreciation deduction (Stimulus additional first year depreciation deduction) for the taxable year in which qualified property acquired by a taxpayer after 2007 is placed in service by the taxpayer before 2011 (before 2012 in the case of property described in § 168(k)(2)(B) or (C)).

Section 5.01 of Rev. Proc. 2008-54, 2008-33 I.R.B. 722, provides that for purposes of the Stimulus additional first year depreciation deduction, rules similar to the rules in § 1.168(k)-1 of the Income Tax Regulations for "qualified property" or for "30-percent additional first year depreciation deduction" apply. However, in applying § 1.168(k)-1(d)(1)(i), the computation of the allowable Stimulus additional first year depreciation deduction is made in accordance with the rules for 50-percent bonus depreciation property.

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

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.

CONCLUSIONS

Based solely on the facts and representations submitted, we conclude that a revocation of Taxpayer's election not to deduct any Stimulus additional first year depreciation for all eligible classes of property placed in service by Taxpayer in the taxable year ended Date 1, 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 Stimulus additional first year depreciation for all eligible classes of property placed in service by Taxpayer in the taxable year ended Date 1. The revocation must be made in a written statement filed with Taxpayer's amended consolidated federal tax return for the taxable year ended Date 1. In addition, a copy of this letter must be attached to such amended return. A copy is 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 under any other provisions of the Code. Specifically, no opinion is expressed or implied on (1) whether any item of depreciable property placed in service by Taxpayer in the A taxable year is eligible for the Stimulus additional first year depreciation deduction under § 168(k), or (2) if any item of such property is eligible for the Stimulus additional first year depreciation deduction, whether that item is qualified property as defined in § 168(k)(2).

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, we are sending a copy of this letter to Taxpayers= authorized representative. We are also sending a copy of this letter to the appropriate Industry Director, LB&I.

Sincerely,

Kathleen Reed

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

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