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-144655-11
Date:
April 20, 2012

Re: Request to Revoke the Election Not to Deduct the Additional First Year Depreciation

Legend

Taxpayer =

Date 1 =

Date 2 =

A =

B =

C =

X =

Dear :

This letter responds to a letter dated September 8, 2011, 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 (Code) not to deduct the 100-percent or 50-percent additional first year depreciation that was made on its federal tax return for the taxable years ended Date 1 (the A taxable year) or Date 2 (the B taxable year).

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is a partnership with a calendar year-end. Taxpayer is engaged in the business of buying, raising, and selling X. Since Taxpayer's inception in A, its business has generated only net operating losses.

On its timely filed federal partnership income return for the A and B taxable year Taxpayer made an election under § 168(k)(2)(D)(iii) not to deduct the 50-percent and 100-percent additional first year depreciation for qualified property placed in service during those taxable years. Taxpayer made the election based on the advice of its qualified professional outside tax preparer (tax preparer).

Given that Taxpayer was in a loss position and § 469 does not allow as a deduction the passive activity loss for the taxable year of a taxpayer, the tax preparer's advice to elect out of the additional first year depreciation was based on the tax preparer's mistaken belief that the involvement of C, one of the partners in Taxpayer, was passive activity as defined under § 469.

Subsequent to filing both the A and B tax returns, Taxpayer's tax preparer discovered that C materially participated under § 469 in the trade or business of Taxpayer for both the A and the B taxable year. Upon discovering the taxpayer preparer's error, Taxpayer submitted this request to revoke the election not to deduct the 50-precent and 100-percent additional first year depreciation made on its A return and B federal return. Nothing has changed about C's activities within Taxpayer since the original returns were filed that would cause C's involvement in Taxpayer's trade or business to be treated different under § 469 than it would have been before the returns were filed.

RULING REQUESTED

Taxpayer requests consent to revoke its election not to deduct the 50-percent and 100-percent additional first year depreciation made on its A and B federal tax return for all qualified property placed in service during the taxable years ended Date 1 and Date 2.

LAW AND ANALYSIS

Section 168(k), as amended by § 103 of the Economic Stimulus Act of 2008, Pub. L. No. 110-185, 122 Stat. 613 (February 13, 2008), 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 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 168(k), as amended by § 401(b) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, 124 Stat. 3296 (December 17, 2010) also allows a 100-percent additional first year depreciation deduction for qualified property acquired by a taxpayer after September 8, 2010, and before January 1, 2012, and placed in service by the taxpayer before January 1, 2012 (before January 1, 2013, in the case of property described in § 168(k)(2)(B) and (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 (the 50-percent additional first year depreciation), 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 3.01 of Rev. Proc. 2011-26, 2011-16 I.R.B. 664, provides that depreciable property is eligible for the 100-percent additional first year depreciation deduction if the property is qualified property (as defined in § 168(k)(2)) and also meets the additional requirements in section 3.02 of Rev. Proc. 2011-26. Further, it provides that for purposes of determining whether depreciable property is qualified property, rules similar to the rules in § 1.168(k)-1 for "qualified property" or for "30-percent additional first year depreciation deduction" apply.

Section 168(k)(2)(D)(iii) provides that a taxpayer may elect not to deduct the 50-percent or 100-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).

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 the 50-percent or 100-percent additional first year depreciation for all eligible classes of property placed in service by Taxpayer in the taxable years ended Date 1 and Date 2, 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 the 50-percent and 100-percent additional first year depreciation for all eligible classes of property placed in service by Taxpayer in the taxable years ended Date 1 and Date 2. The revocation must be made in a written statement filed with Taxpayer's amended federal income returns for the taxable years ended Date 1 and Date 2. 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 whether any item of depreciable property placed in service by Taxpayer in either the A or B taxable year is eligible for the 50-percent or 100-percent additional first year depreciation under 168(k).

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 Small Business/Self-Employed Division (SB/SE) Area Office for income tax.

Sincerely,

Willie E. Armstrong, Jr.

Willie E. Armstrong, Jr.
Senior Technical Reviewer, Branch 7
Office of Associate Chief Counsel
(Income Tax and Accounting)

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