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:7
PLR-153547-12

Date:
May 22, 2013

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

Taxpayer =
A =
B =
SB/SE Official =

Dear :

This letter responds to a letter dated December 12, 2012, and supplemental correspondence, requesting the consent of the Commissioner of Internal Revenue to revoke Taxpayer's elections not to deduct the additional first year depreciation that were made on its federal tax returns for the taxable years ended A and B.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is an S-corporation with a calendar year-end. Taxpayer is engaged in the business of retail sales of ice to the public using ice vending machines.

On its timely filed federal tax return for the taxable year ended A, Taxpayer made an election not to deduct the 50-percent additional first year depreciation under § 168(k)(1) of the Internal Revenue Code for all 7-year and 15-year property placed in service during that taxable year. On its timely filed federal tax return for the taxable year ended B, Taxpayer made an election not to deduct the 100-percent additional first year depreciation under § 168(k)(5) for all 15-year property placed in service during that taxable year.

At the time Taxpayer filed its federal tax returns for the taxable years ended A and B, Taxpayer was not aware that its majority shareholder needed Taxpayer to flow-through the additional first year depreciation deduction to offset other income on that

individual's federal income tax returns for the taxable years ended A and B. If Taxpayer was made aware of this situation before Taxpayer filed its federal tax returns for the taxable years ended A and B, Taxpayer would have claimed the additional first year depreciation deduction for the qualified property placed in service in the taxable years ended A and B.

RULING REQUESTED

Taxpayer requests to revoke its election not to deduct the 50-percent additional first year depreciation for qualified property that is 7-year or 15-year property placed in service during the taxable year ended A, and its election not to deduct the 100-percent additional first year depreciation for qualified property that is 15-year property placed in service during the taxable year ended B.

LAW

Section 168(k)(1)(A) allows a 50-percent additional first year depreciation deduction for the taxable year in which qualified property (as defined in § 168(k)(2)) is placed in service by a taxpayer.

Section 168(k)(5) provides that in the case of qualified property acquired by the taxpayer (under rules similar to the rules of § 168(k)(2)(A)(ii) and (iii)) after September 8, 2010, and before January 1, 2012, and which is 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) or (C)), a 100-percent additional first year depreciation deduction for the taxable year in which such qualified property is placed in service by the taxpayer is allowable.

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, section 3.01 of Rev. Proc. 2011-26 provides that 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.

Section 168(k)(2)(D)(iii) 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. The term "class of property" is defined in § 1.168(k)-1(e)(2) as meaning, in general, each class of property described in § 168(e) (for example, 5-year property).

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 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.

CONCLUSIONS

Based solely on the facts and representations submitted, we conclude that a revocation of Taxpayer's election not to deduct the 50-percent additional first year depreciation for qualified property that is 7-year or 15-year property placed in service by Taxpayer in the taxable year ended A, and a revocation of Taxpayer's election not to deduct the 100-percent additional first year depreciation for qualified property that is 15-year property placed in service by Taxpayer in the taxable year ended 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 the additional first year depreciation for qualified property that is 7-year or 15-year property placed in service by Taxpayer in the taxable year ended A, and for qualified property that is 15-year property placed in service by Taxpayer in the taxable year ended B. The revocation must be made in a written statement filed with Taxpayer's amended federal tax returns for the taxable years ended A and B. In addition, a copy of this letter must be attached to such amended returns. 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 taxable years ended A and B is eligible for the additional first year depreciation deduction under § 168(k)(1) or § 168(k)(5); or (2) the propriety of Taxpayer's determination of the class of property for any item of depreciable property placed in service by Taxpayer in the taxable years ended A and B.

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 Taxpayer's authorized representative. We are also sending a copy of this letter to the SB/SE Official.

Sincerely,

Kathleen Reed

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

Enclosures (2)
6110 copy
Copy of this letter