Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
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Refer Reply To:
CC:ITA:B07
PLR-125052-13

Date:
August 01, 2013

Re: Request for Extension of Time to Make the Election Not to Deduct the Additional First Year Depreciation

LEGEND

Parent =

Subsidiary =

Date 1 =
A =

Dear :

This letter responds to a letter dated May 15, 2013, and supplemental correspondence, submitted by Parent on behalf of itself and Subsidiary (hereinafter Parent and Subsidiary will be collectively referred to as "Taxpayer") requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the election not to deduct the additional first year depreciation under § 168(k) of the Internal Revenue Code for all classes of qualified property placed in service by Taxpayer in the taxable year ended Date 1 (the A taxable year).

FACTS

Parent represents that the facts are as follows:

Parent is the parent of an affiliated group of corporations that includes Subsidiary. The affiliated group of corporations files consolidated federal income tax returns on a 52/53 week year end that ends on the last Saturday in December.

Taxpayer predominantly operates on a cooperative basis procuring grocery merchandise for distribution to its members throughout the United States.

Taxpayer placed in service qualified property (as defined in section 168(k)(2)) during the A taxable year.

Taxpayer engaged a certified public accounting firm to prepare Taxpayer's federal income tax return and advise them with respect to all relevant elections for the A taxable year. Relying on advice from their certified public accounting firm, Taxpayer decided to make the election not to deduct the additional first year depreciation deduction under § 168(k). However, the certified public accounting firm did not advise Taxpayer that an election statement was required to be included with the federal income tax return in order to make a valid election not to deduct the additional first year depreciation.

On Parent's timely filed consolidated federal income tax return for the taxable year ended Date 1, Taxpayer did not claim the additional first year depreciation deduction for all classes of qualified property placed in service during such taxable year. The certified public accounting firm that prepared this tax return inadvertently failed to attach the election statement not to deduct the additional first year depreciation for such property to the consolidated federal income tax return for the taxable year ended Date 1.

RULING REQUESTED

Taxpayer requests a ruling pursuant to §§ 301.9100-1 and 301.9100-3 that it be granted an extension of time to make an election not to deduct the additional first year depreciation under § 168(k) for all classes of qualified property placed in service by Taxpayer during the taxable year ended Date 1.

LAW AND ANALYSIS

Section 168(k)(1) provides a 50-percent additional first year depreciation deduction in the placed-in-service year for qualified property (i) acquired by a taxpayer after December 31, 2007, and before September 9, 2010, or acquired by a taxpayer generally after December 31, 2011, and (ii) placed in service by the taxpayer before January 1, 2014 (or January 1, 2015, for qualified property described in § 168(k)(2)(B) or (C)).

Section 168(k)(5) provides a 100-percent additional first year depreciation deduction in the placed-in-service year for qualified property acquired by a taxpayer after September 8, 2010, and generally before January 1, 2012, and placed in service by the taxpayer before January 1, 2012 (or January 1, 2013, for qualified property

described in § 168(k)(2)(B) or (C)). See section 8 of Rev. Proc. 2011-26, 2011-16 I.R.B. 664, 665.

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) of the Income Tax Regulations as meaning, in general, each class of property described in § 168(e) (for example, 5-year property). See section 5.01 of Rev. Proc. 2008-54, 2008-2 C.B. 722, and section 3.01 of Rev. Proc. 2011-26, 2011-16 I.R.B. at 665 (stating rules similar to rules in § 1.168(k)-1 for "qualified property" or for "30-percent additional first year depreciation deduction" apply for purposes of § 168(k) as currently in effect).

Section 1.168(k)-1(e)(3)(i) provides that the 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)-1(e)(3)(ii) provides that the 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 ended Date 1, 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 (including extensions) 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.

Under § 301.9100-1, the Commissioner of Internal Revenue has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory 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 § 301.9100-2. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

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 the grant of 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 60 calendar days from the date of this letter to make the election not to deduct the additional first year depreciation under § 168(k) for all classes of property placed in service by Taxpayer during the taxable year ended Date 1, that qualify for the additional first year depreciation deduction. This election must be made by Parent by filing an amended consolidated federal income tax return for such taxable year, with a statement indicating that Taxpayer is electing not to deduct the additional first year depreciation for all classes of property placed in service by the Taxpayer 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 provision 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 ended Date 1, is eligible for additional first year depreciation deduction.

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 representative. We are also sending a copy of this letter ruling to the appropriate operating division director.

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