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Department of the Treasury
Washington, DC 20224

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, ID No.

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Refer Reply To:
CC:ITA:B07
PLR-106528-14

Date:
August 18, 2014

Re: Request for Ruling under §§ 168(i)(5) and 446

Legend

Taxpayer =

Date 1 =

Date 2 =

A =

B =

C =

D =

Dear :

This letter responds to a letter dated February 6, 2014, submitted by Taxpayer's authorized representative, requesting certain letter rulings under §§ 168(i)(5) and 446 of the Internal Revenue Code, relating to the depreciation of Taxpayer's outdoor digital LED advertising displays following an intended election under § 1033(g)(3) to treat such displays as real property for purposes of Chapter 1 of the Code.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is the common parent of a group of affiliated corporations that files a consolidated federal income tax return on a calendar year basis. Taxpayer operates through its wholly-owned subsidiary A. Taxpayer was incorporated in the State of B on or about Date 1, and became the parent of the current holding company structure. Taxpayer's overall method of accounting is the accrual method.

Taxpayer is in the business of building and maintaining outdoor advertising displays and making available space on such displays to advertisers. The advertising displays include billboards, interstate logo signs, and various types of transit advertising displays (for example, bus shelters, benches, and buses).

With its federal income tax return for the taxable year ending Date 2 ("the C taxable year"), Taxpayer intends to file an election under § 1033(g)(3) to treat its permanently affixed outdoor advertising displays as real property for purposes of Chapter 1 of the Code, effective for the C taxable year and subsequent taxable years. The assets that will be subject to this election include its billboards, highway logo signs, bus shelters, and other qualifying outdoor advertising displays that Taxpayer holds at any time during the C taxable year, and acquires or constructs in subsequent taxable years. Taxpayer's billboard signs include static billboard displays, trivision displays, and digital LED displays.

Historically, Taxpayer has classified all of its billboard signs for Federal income tax depreciation purposes under § 168(e) as 15-year property, with the exception of the LED displays. Taxpayer has classified its LED displays placed in service in D or later under § 168(e) as 5-year property and depreciated such displays under § 168(a) using a 5-year recovery period and the 200-percent declining balance method of depreciation, switching to the straight-line method of depreciation. Only the LED displays that are placed in service in D or later, held at any time during the C taxable year, and classified by Taxpayer under § 168(e) as 5-year property are subject to this letter ruling.

Following Taxpayer's election under § 1033(g)(3), all of Taxpayer's permanently affixed outdoor advertising displays (including the permanently affixed digital LED displays) will be deemed to be real property for purposes of Chapter 1 of the Code. Taxpayer has determined that, following the election under § 1033(g)(3), all of these outdoor advertising displays (including the outdoor digital LED displays) will be classified as 15-year property under § 168(e) and will be depreciated under § 168(a) using a 15-year recovery period and the 150-percent declining balance method of depreciation, switching to the straight-line method of depreciation.

Taxpayer has not claimed an investment credit under former § 38 on any of its outdoor advertising displays. Taxpayer has not made an election to expense the basis of any of its outdoor advertising displays under § 179(a). None of the outdoor advertising displays are required to be depreciated under the alternative depreciation

system of § 168(g) (“ADS”), and Taxpayer has not made an election to depreciate them using ADS.

RULINGS REQUESTED

Taxpayer requests the following rulings:

(1) The depreciation allowance under § 168(a) for any of Taxpayer’s outdoor digital LED advertising displays whose applicable recovery period or applicable depreciation method changes as a result of Taxpayer making an election under § 1033(g)(3) shall be determined under § 1.168(i)-4(d) of the Income Tax Regulations, for the taxable year in which the election is effective and any subsequent taxable year.

(2) The required changes in the determination of the depreciation allowance under § 168(a) for any of Taxpayer’s outdoor digital LED advertising displays as a result of the election under § 1033(g)(3) are not a change in method of accounting that requires the consent of the Commissioner of Internal Revenue.

LAW AND ANALYSIS

Section 167(a) allows as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear, and obsolescence of property used in a trade or business or of property held for the production of income.

The depreciation deduction provided by § 167(a) for tangible property placed in service after 1986 generally is determined under § 168. This section prescribes two methods for determining depreciation allowances: (1) the general depreciation system in § 168(a) (“GDS”); and (2) the ADS. Under either depreciation system, a taxpayer computes the depreciation deduction by using a prescribed depreciation method, recovery period, and convention.

The applicable recovery period for purposes of either §§ 168(a) or 168(g) is determined by reference to class life or by statute. Section 168(i)(1) defines the term “class life” as meaning the class life (if any) that would be applicable with respect to any property as of January 1, 1986, under § 167(m) (determined without regard to § 167(m)(4) and as if the taxpayer had made an election under § 167(m)) as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990. Former § 167(m) provided that in the case of a taxpayer who elected the asset depreciation range (ADR) system of depreciation, the depreciation allowance was based on the class life prescribed by the Secretary that reasonably reflected the anticipated useful life of that class of property to the industry or other group.

Section 1.167(a)-11(b)(4)(iii)(b) provides rules for classifying property under former § 167(m). Property is included in the asset class for the activity in which the

property is primarily used. Further, property is classified according to its primary use even though the activity in which such property is primarily used is insubstantial in relation to all the taxpayer's activities.

Section 1.167(b)-11(e)(3)(iii) further provides that in the case of a lessor of property, unless there is an asset class in effect for lessors of such property, the asset class for the property is determined as if the property were owned by the lessee. However, in the case of an asset class based upon the type of property (for example, trucks or railroad cars) as distinguished from the activity in which used, the property is classified without regard to the activity of the lessee.

Rev. Proc. 87-56, 1987-2 C.B. 674, sets forth the class lives of property that are necessary to compute the depreciation allowances under §168. The revenue procedure establishes two broad categories of depreciable assets: 1) asset classes 00.11 through 00.4 that consist of specific assets used in all business activities; and 2) asset classes 01.1 through 80.0 that consist of assets used in specific business activities. The same item of depreciable property can be described in both an asset category (asset classes 00.11 through 00.4) and an activity class (asset classes 01.1 through 80.0), in which case the item is classified in the asset category. See Norwest Corp. & Subs. v. Commissioner, 111 T.C. 105 (1998) (item described in both an asset and an activity category should be placed in the asset category).

Asset class 00.3 of Rev. Proc. 87-56, captioned "Land Improvements," includes improvements directly to or added to land, whether such improvements are § 1245 property or § 1250 property, provided such improvements are depreciable. It does not include land improvements that are explicitly included in any other asset class of Rev. Proc. 87-56.

Asset class 57.1 of Rev. Proc. 87-56, captioned "Distributive Trades and Services—Billboard, Service Station Buildings and Petroleum Marketing Land Improvements," includes, among other things, billboards, whether such assets are § 1245 property or § 1250 property.

Assets in asset class 00.3 or asset class 57.1 have a class life of 20 years and, thus, are classified under § 168(e) as 15-year property. As such, under the GDS, their applicable recovery period under § 168(c) is 15 years, and their applicable depreciation method under § 168(b)(2) is the 150-percent declining balance method of depreciation (switching to the straight-line method of depreciation in the taxable year in which that method provides a larger deduction).

Section 168(i)(5) provides that the Secretary shall, by regulations, provide for the method of determining the deduction allowable under § 167(a) with respect to any tangible property for any taxable year (and the succeeding taxable years) during which such property changes status under § 168 but continues to be held by the same person.

Section 1.168(i)-4 provides the rules under § 168(i)(5). For purposes of § 1.168(i)-4, § 1.168(i)-4(a) provides that the year of change is the taxable year in which a change in the use occurs.

Section 1.168(i)-4(d)(1) provides that § 1.168(i)-4(d) applies to a change in the use of MACRS property (as defined in § 1.168(b)-1(a)(2)) during a taxable year subsequent to the placed-in-service year, if the property continues to be MACRS property owned by the same taxpayer and, as a result of the change in the use, has a different recovery period, a different depreciation method, or both. For example, § 1.168(i)-4(d) applies to MACRS property that: (i) begins or ceases to be used predominantly outside the United States; (ii) results in a reclassification of the property under § 168(e) due to a change in the use of the property; or (iii) begins or ceases to be tax-exempt use property (as defined in § 168(h)).

Section 1.168(i)-4(d)(2)(i) provides that a change in the use of MACRS property occurs when the primary use of the MACRS property in the taxable year is different from its primary use in the immediately preceding taxable year. The primary use of MACRS property may be determined in any reasonable manner that is consistently applied to the taxpayer's MACRS property.

Section 1.168(i)-4(d)(2)(iii) provides that if a change in the use of MACRS property occurs under § 1.168(i)-4(d)(2), the depreciation allowance for that MACRS property for the year of change is determined as though the use of the MACRS property changed on the first day of the year of change.

Section 1.168(i)-4(d)(4)(i) provides that, if a change in the use results in a longer recovery period and/or a depreciation method for the MACRS property that is less accelerated than the method used before the change in the use, the depreciation allowances beginning with the year of change are determined as though the MACRS property had been originally placed in service by the taxpayer with the longer recovery period and/or the slower depreciation method. MACRS property affected by § 1.168(i)-4(d)(4) is not eligible in the year of change for the election provided under §§ 168(f)(1), 179, or 1400L(f), or for the additional first year depreciation deduction provided in § 168(k) or 1400L(b). See § 1.168(i)-4(d)(4)(ii) or § 1.168(i)-4(d)(5)(ii)(B), as applicable, for determining depreciation for this property beginning with the year of change.

Section 1.168(i)-4(f) provides that a change in computing the depreciation allowance in the year of change for property subject to § 1.168(i)-4 is not a change in method of accounting under § 446(e). See § 1.446-1(e)(2)(ii)(d)(3)(ii).

Section 1.446-1(e)(2)(i) provides, in pertinent part, that, except as otherwise expressly provided, a taxpayer who changes the method of accounting employed in keeping the taxpayer's books shall, before computing the taxpayer's income upon such

new method for purposes of taxation, secure the consent of the Commissioner.

Section 1.446-1(e)(2)(ii)(d)(2)(i) specifies that a change in the depreciation or amortization method, period of recovery, or convention of a depreciable or amortizable asset is a change in method of accounting. However, § 1.446-1(e)(2)(ii)(d)(3)(ii) provides that a change in computing depreciation or amortization allowances in the taxable year in which the use of an asset changes in the hands of the same taxpayer is not a change in method of accounting.

Section 1033(g)(3)(A) provides that a taxpayer may elect, at such time and in such manner as the Secretary may prescribe, to treat property that constitutes an outdoor advertising display as real property for purposes of Chapter 1 of the Code. Section 1033(g)(1)(A) further provides that the § 1033(g)(3) election may not be made for property for which the taxpayer has made an election under § 179(a). In addition, § 1.1033(g)-1(b)(1) provides that the § 1033(g)(3) election may not be made for property for which the taxpayer has claimed the investment credit under § 38.

For purposes of § 1033(g)(3), § 1033(g)(3)(C) defines an “outdoor advertising display” as a rigidly assembled sign, display, or device permanently affixed to the ground or permanently attached to a building or other inherently permanent structure constituting, or used for the display of, a commercial or other advertisement to the public. Section 1.1033(g)-1(b)(3) defines an “outdoor advertising display” as a rigidly assembled sign, display, or device that constitutes, or is used to display, a commercial or other advertisement to the public and is permanently affixed to the ground or permanently attached to a building or other inherently permanent structure. These regulations further provide that the term includes highway billboards affixed to the ground with wooden or metal poles, pipes, or beams, with or without concrete footings.

In this case, Taxpayer intends to make an election under § 1033(g)(3) for its permanently affixed outdoor advertising displays, effective for the C taxable year and subsequent taxable years. Taxpayer will continue to use its outdoor digital LED advertising displays in the same trade or business, and in the same manner, as before such election. However, beginning with the C taxable year, Taxpayer’s outdoor digital LED advertising displays held at any time during the C taxable year, or acquired or constructed in subsequent taxable years, will be treated as real property for purposes of Chapter 1 of the Code as a result of the election under § 1033(g)(3). The § 1033(g)(3) election will not change Taxpayer’s characterization of its outdoor advertising displays in any taxable year before the C taxable year.

Prior to the § 1033(g)(3) election, Taxpayer classified its outdoor digital LED advertising displays placed in service in D or later as 5-year property. Taxpayer did not identify the asset class of Rev. Proc. 87-56 or the asset under § 168(e)(3)(B) under which Taxpayer included the outdoor digital LED advertising displays. However, based on Taxpayer’s classification of these advertising displays as 5-year property, Taxpayer

presumably determined that the outdoor digital LED advertising displays are tangible personal property for depreciation purposes. As a result of its election under § 1033(g)(3), Taxpayer's outdoor digital LED advertising displays will cease to be tangible personal property and will begin to be real property for purposes of Chapter 1 of the Code, effective for the C taxable year and subsequent taxable years. Taxpayer represents that this change from tangible personal property to real property beginning with the C taxable year will result in its outdoor digital LED advertising displays being reclassified from 5-year property to 15-year property under § 168(e) beginning with the C taxable year. The § 1033(g)(3) election will not change Taxpayer's classification of its outdoor digital LED advertising displays as 5-year property in any taxable year before the C taxable year. Accordingly, the change of Taxpayer's outdoor digital LED advertising displays to real property, effective for the C taxable year and subsequent taxable years, as a result of the § 1033(g)(3) election constitutes a change in the use of such property.

CONCLUSIONS

Based solely on the facts and representations submitted, we conclude that:

(1) The depreciation allowance under § 168(a) for any of Taxpayer's outdoor digital LED advertising displays whose applicable recovery period or applicable depreciation method changes as a result of Taxpayer making an election under § 1033(g)(3) shall be determined under § 1.168(i)-4(d) for the taxable year in which the election is effective and any subsequent taxable year.

(2) The required changes in the determination of the depreciation allowance under § 168(a) for any of Taxpayer's outdoor digital LED advertising displays as a result of the election under § 1033(g)(3) are not a change in method of accounting that requires the consent of the Commissioner.

Except as specifically set forth above, we express no opinion concerning the federal income tax consequences of the facts described above under any other provisions of the Code (including other subsections of §168). Specifically, no opinion is expressed or implied on: (1) whether any item of depreciable property placed in service by Taxpayer qualifies for the § 1033(g)(3) election; (2) whether Taxpayer's classification of its outdoor digital LED advertising displays as 5-year property is proper under § 168(e); or (3) whether Taxpayer's outdoor digital LED advertising displays are land improvements for depreciation purposes (that is, whether the outdoor digital LED advertising displays are inherently permanent structures as determined under the factors set forth in Whiteco Industries, Inc. v. Commissioner, 65 T.C. 664, 672-673 (1975)).

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 appropriate operating division director.

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.

Sincerely yours,

Kathleen Reed

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

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