Internal Revenue Service

Department of the Treasury
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Date:
June 05, 2017

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

P	=	
Taxpayer	=	
Year1	=	
Date1	=	
Date2	=	
A	=	
B	=	
C	=	

Dear :

This letter responds to a letter dated December 17, 2016, and supplemental correspondence, submitted by P on behalf of Taxpayer, requesting an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make the election not to deduct the additional first year depreciation deduction under § 168(k)(1) of the Internal Revenue Code for certain qualified property placed in service by Taxpayer during the taxable year ended Date1 (the Year1 taxable year).

All references in this letter to § 168(k) are treated as a reference to § 168(k) as in effect prior to amendment by § 143(b) of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), enacted as part of the Consolidated Appropriations Act, 2016, Division Q, Pub. L. 114-113, 129 Stat. 2242 (December 18, 2015).

FACTS

P represents that the facts are as follows:

In the taxable year ended Date1, P was a general limited partnership that elected to be a domestic corporation and was the common parent of an affiliated group of corporations that included Taxpayer and A (the "B"). A is the direct parent of Taxpayer. P was converted into a single-member limited liability company as of Date2 (the day after Date1), resulting in the liquidation of P and the termination of the B.

To ensure that the termination of the B would not cause the inclusion of income or gain as a result of any excess loss accounts, members of P's tax department calculated the stock basis of each member of the B, including Taxpayer, in the month before the end of the Year1 taxable year. This calculation was based on the best available information at that time, including an estimated computation of federal taxable income for the Year1 taxable year. This estimated federal taxable income computation did not include any additional first year depreciation deduction for qualified property placed in service during the Year1 taxable year. The calculation of stock basis showed that A's basis in Taxpayer's stock was negative. As a result of this analysis and before the end of the Year1 taxable year, Taxpayer was equity capitalized with additional cash to entirely eliminate A's excess loss account in Taxpayer's stock.

During the Year1 taxable year, Taxpayer was engaged in C, and placed in service 5-year and 7-year property that is qualified property (as defined in § 168(k)(2)).

P timely filed its consolidated federal income tax return for the Year1 taxable year. On that return, Taxpayer deducted the additional first year depreciation for 5-year and 7-year property that is qualified property placed in service during the Year1 taxable year. The members of P's tax department who prepared and reviewed the consolidated federal income tax return for the Year1 taxable year failed to consider the detrimental effect of this deduction on A's basis in Taxpayer's stock and, as a result, Taxpayer did not make the election not to deduct the additional first year deprecation for 5-year and 7-year property that is qualified property placed in service by Taxpayer in the Year1 taxable year.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to § 301.9100-3 to make the election not to deduct the additional first year depreciation deduction under § 168(k)(1) for all 5-year and 7-year property that is qualified property placed in service by Taxpayer during the Year1 taxable year.

LAW AND ANALYSIS

Section 168(k)(1) allows, in the taxable year that qualified property is placed in service, a 50-percent additional first year depreciation deduction for qualified property (i) acquired by a taxpayer after December 31, 2007, and before September 9, 2010, or after December 31, 2011 (or December 31, 2012, for qualified property described in §§ 168(k)(2)(B) or 168(k)(2)(C)) and before January 1, 2016, and (ii) placed in service by the taxpayer before September 9, 2010, or after December 31, 2011 (or December 31, 2012, for qualified property described in §§ 168(k)(2)(B) or 168(k)(2)(C)) and before January 1, 2016 (or January 1, 2017, for qualified property described in §§ 168(k)(2)(B) or 168(k)(2)(C)).

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 (rules similar to the 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 Year1 taxable year 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 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 making certain elections. 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.

CONCLUSIONS

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)(1) for all 5-year and 7-year property placed in service by Taxpayer during the taxable year ended Date1, that qualify for the additional first year depreciation deduction. This election must be made by P 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 5-year and 7-year property placed in service during that taxable year.

Except as specifically set forth above, we express no opinion concerning the federal 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 whether any item of depreciable property placed in service by Taxpayer during the taxable year ended Date1, is eligible for the 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.

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

Sincerely,

Kathleen Reed

KATHLEEN REED
Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax and Accounting)