Internal Revenue Service

Number: **201811006**
Release Date: 3/16/2018

Index Number: 9100.04-00

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-120523-17

Date:
December 15, 2017

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

Legend

P	=	
Sub1	=	
Sub2	=	
Year1	=	
Date1	=	
Date2	=	
Date3	=	
Date4	=	
Firm	=	
$a	=	
$b	=	
$c	=	

Dear :

This letter ruling responds to a letter dated June 28, 2017, and supplemental correspondence, submitted by P on behalf of its wholly-owned subsidiaries, Sub1 and Sub2, requesting an extension of time to make the election under § 168(k)(2)(D)(iii) of

the Internal Revenue Code not to deduct the additional first year depreciation under § 168(k)(1) for certain qualified property placed in service by Sub1 and Sub2 during the short taxable year ended Date1 (the "Year1 taxable year"). This request is made pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

All references in this letter ruling 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:

P is the common parent of an affiliated group of corporations, including Sub1 and Sub2, which files consolidated federal income tax returns on a calendar year basis. Their overall method of accounting is an accrual method.

Prior to its acquisition by P, Sub1 was the common parent of an affiliated group of corporations, including Sub2, that filed consolidated federal income tax returns. On Date2, P acquired all the outstanding stock of Sub1. The acquisition caused Sub1's consolidated group to terminate as a result of P becoming the new parent corporation. Following the acquisition, Sub1, Sub2, and the other members of Sub1's consolidated group became directly or indirectly wholly-owned subsidiaries of P.

During the Year1 taxable year, Sub1 placed in service 5-year property that is qualified property (as defined in § 168(k)(2) before the application of § 168(k)(2)(D)(iii)). The 5-year property had a total unadjusted depreciable basis of $a. Also during the Year1 taxable year, Sub1 and Sub2 placed in service 7-year property that is qualified property (as defined in § 168(k)(2) before the application of § 168(k)(2)(D)(iii)) with a total unadjusted depreciable basis of $b and $c, respectively. Other than nonresidential real property, this property was the only property placed in service by Sub1 and Sub2 during the Year1 taxable year. For such 5-year and 7-year property, P determined to make the election under § 168(k)(2)(D)(iii) not to claim the additional first year depreciation under § 168(k)(1).

Firm was engaged to prepare P's consolidated federal income tax return for the Year1 taxable year. The due date (without extensions) of such return was Date3. Prior to this date, Firm attempted to electronically file Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, for P's consolidated federal income tax return for the Year1 taxable year. Firm believed that Form 7004 was timely filed, extending the due date to Date4. On or about Date3,

Firm notified P that the due date of P's consolidated federal income tax return for the Year1 taxable year had been extended to Date4.

On Date4, P filed its consolidated federal income tax return for the Year1 taxable year. On this return, P represents that Sub1 and Sub2 did not deduct the additional first year depreciation for the 5-year and 7-year property that are qualified property placed in service during the Year1 taxable year. To this return, P represents that it attached a statement stating that P's consolidated group is making the election under § 168(k)(2)(D)(iii) not to deduct the additional first year depreciation for the following classes of qualified property placed in service during the Year1 taxable year: 3-, 5-, 7-, and 15-year property.

Subsequent to Date4, Firm discovered that it had not timely filed the above-mentioned Form 7004. As a result, P's consolidated federal income tax return for the Year1 taxable year was not timely filed. Because P did not timely file such return, Sub1 and Sub2 failed to make the election not to deduct the additional first year depreciation for all the 5-year and 7-year property that are qualified property and placed in service during the Year1 taxable year.

RULING REQUESTED

Sub1 and Sub2 request an extension of time to make the election under § 168(k)(2)(D)(iii) not to deduct the additional first year depreciation under § 168(k)(1) with respect to 5-year and 7-year property that are qualified property placed in service during the taxable year ended Date1.

LAW

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 (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.

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, Sub1 and Sub2 are granted an extension to, and including, Date4, 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 Sub1 and Sub2 during the taxable year ended Date1, that qualify for the additional first year depreciation deduction. In this regard, we will consider this election made by Sub1 and Sub2 on P's consolidated federal income tax return for the taxable year ended Date1, filed on Date4, to be timely made.

Except as specifically set forth above, no opinion is expressed or implied 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 Sub1 and Sub2 during the taxable year ended Date1, is eligible for the additional first year depreciation deduction.

Further, this letter ruling does not grant an extension of time for filing P's consolidated federal income tax return for the taxable year ended Date1.

This letter ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that this ruling may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter ruling to P'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