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-120528-17
Date: December 12, 2017

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

Legend

P	=
Taxpayer	=
Year1	=
Date1	=
Date2	=
Date3	=
Firm	=
A	=
B	=
$a	=

Dear :

This letter ruling responds to a letter dated June 28, 2017, and supplemental correspondence, submitted by P on behalf of its wholly-owned subsidiary, Taxpayer, 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 Taxpayer 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 was the common parent of an affiliated group of corporations, including Taxpayer, that filed consolidated federal income tax returns on a calendar year basis. Taxpayer owns and operates A. Taxpayer's overall method of accounting is an accrual method.

On Date1, B acquired all of the outstanding stock of P. The acquisition caused the P consolidated group to terminate as a result of B becoming the new parent corporation. As a result, the P consolidated group was required to file a consolidated federal income tax return for the short taxable year ended Date1. Firm was engaged to prepare such return.

During the Year1 taxable year, Taxpayer 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 $a. This property was the only property placed in service by Taxpayer during the Year1 taxable year. For such 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).

The due date (without extensions) of P's consolidated federal income tax return for the Year1 taxable year was Date2. 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 Date3. On or about Date2, Firm notified P that the due date of P's consolidated federal income tax return for the Year1 taxable year had been extended to Date3.

On Date3, P filed its consolidated federal income tax return for the Year1 taxable year. On this return, P represents that Taxpayer did not deduct the additional first year depreciation for the 7-year property that is qualified property and 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 Date3, 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, Taxpayer failed to make the election not to deduct the additional first year depreciation for the 7-year property that is qualified property and placed in service during the Year1 taxable year.

RULING REQUESTED

Taxpayer requests 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 7-year property that is qualified property and placed in service by Taxpayer 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, Taxpayer is granted an extension to, and including, Date3, to make the election not to deduct the additional first year depreciation under § 168(k)(1) for all 7-year property placed in service by Taxpayer 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 Taxpayer on P's consolidated federal income tax return for the taxable year ended Date1, filed on Date3, 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 Taxpayer 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

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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

cc: