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Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B07
PLR-124256-17

Date:
February 01, 2018

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

Legend

Taxpayer =

P1 =

P2 =

P3 =

P4 =

P5 =

Date 1 =

Date 2 =

Date 3 =

A =

B =

.

C =

D =

E =

F =

Dear :

This letter responds to a letter dated August 4, 2017, and subsequent correspondence, submitted by Taxpayer on behalf of his wholly owned pass-through entities P1, P2, P3, P4, and P5 (hereinafter collectively referred to as "the affiliated entities"), 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 the affiliated entities during the taxable year ended Date 1 (the A taxable year).

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), for qualified property acquired by the affiliated entities after 2007 and placed in service by the affiliated entities before 2016.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is an individual who files Form 1040, *U.S. Individual Income Tax Return*, on a calendar year basis. Taxpayer wholly owns the affiliated entities. The affiliated entities each file either a Form 1065, *U.S. Income Tax Return for a Partnership* or Form 1120S, *U.S. Income Tax Return for an S Corporation*, as applicable, on a calendar year basis and use an accrual method of accounting. The affiliated entities are in the trade or business of B. The period of limitation on assessment under § 6501(a) for the A taxable year has not expired as of the date of this letter.

The affiliated entities depreciated all property placed in service in A using MACRS depreciation methods, recovery periods, and conventions in accordance with § 168 and Rev. Proc. 87-56, 1987-2 C.B. 674. The affiliated entities claimed additional first year depreciation on all classes of qualified property placed in service in A in accordance with § 168(k). The affiliated entities reported income to their shareholder/partner, Taxpayer, on Schedule K-1, (Form 1120S/1065) *Shareholder's/Partner's Share of*

Income, Deductions, Credits, etc., taking into account the aforementioned depreciation deductions. Taxpayer claimed the depreciation deductions on his A Form 1040.

Taxpayer paid $C of alimony during A and deducted the alimony payments on his A Form 1040. Taxpayer reported a net loss on the return and was precluded from carrying back or carrying over the net loss as a net operating loss (NOL) to the extent the net loss was attributable to the alimony deduction under § 172(d)(4) and § 1.172-3(a)(3) of the Income Tax Regulations (allowing nonbusiness deductions in the computation of NOLs only to the extent of nonbusiness income for taxpayers other than corporations).

Taxpayer could have preserved the benefit of the deduction for alimony on his A return if the affiliated entities had minimized the depreciation deductions flowing through to Taxpayer and eliminated his net loss. Specifically, the affiliated entities could have elected not to claim additional first year depreciation on all classes of eligible property placed in service in A under § 168(k).

The Forms 1065 and Forms 1120S of the affiliated entities are prepared in-house by employees of the affiliated entities. The CFO of the affiliated entities is responsible for the preparation of the returns, and the affiliated entities employ a full time staff, including one or more Certified Public Accountants ("CPAs"), to prepare the federal income tax returns and ensure compliance with all tax rules. Taxpayer generally engages a third party tax professional to prepare his Form 1040. Taxpayer engaged D to prepare his A Form 1040.

Taxpayer was not advised by the affiliated entities' in-house tax preparers or D, and Taxpayer did not know independently, that Taxpayer could preserve the benefit of the deduction for alimony on the A return by having the affiliated entities make the election not to deduct the additional first year depreciation for all classes of qualified property placed in service by the affiliated entities during the A taxable year.

Taxpayer's A Form 1040 was timely filed on Date 2, and the affiliated entities' Forms 1065 and Form 1120S were timely filed prior to Date 3.

Taxpayer discovered the failure to make the election out of additional first year depreciation in E after consulting with D about his A Form 1040. Taxpayer consulted with F regarding potential remedies for the failure to make the election out of additional first year depreciation, and F advised Taxpayer to file this request for relief under Treas. Reg. § 301.9100-3.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 to make the election under § 168(k)(2)(D)(iii), not to deduct the additional

first year depreciation under § 168(k) for all classes of qualified property placed in service in the taxable year ended Date 1.

LAW AND ANALYSIS

Section 168(k)(1) allowed, 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) provided that a taxpayer may elect not to deduct additional first year depreciation for any class of property placed in service by the taxpayer during the taxable year. The term "class of property" is defined in § 1.168(k)–1(e)(2)(i) to mean, 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. 664 (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 A 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 (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 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, the affiliated entities are 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 the affiliated entities during the A taxable year that qualify for the additional first year depreciation deduction. This election must be made by the affiliated entities filing either an amended Form 1065, *U.S. Income Tax Return for a Partnership* or Form 1120S, *U.S. Income Tax Return for an S Corporation*, as applicable, for the A taxable year, with a statement indicating that the affiliated entities are electing not to deduct the additional first year depreciation for all classes of qualified property placed in service 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 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 the affiliated entities during the A taxable year is eligible for the additional first year depreciation deduction.

The rulings contained in this letter are based upon information and representations submitted by the affiliated entities and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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

Sincerely yours,

DEENA DEVEREUX

DEENA DEVEREUX
Senior Technician Reviewer, Branch 7
Office of Associate Chief Counsel
(Income Tax & Accounting)

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