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Date:
March 05, 2018

Re: Request for Extension of Time to Make the Election to Apply § 168(k)(4) to Round 3 Extension Property, Round 4 Extension Property, and Round 5 Extension Property.

Legend

Taxpayer =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

A =

B =

C =

D =

E =

Dear :

This letter responds to a letter dated September 8, 2017, and supplemental correspondence, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to request for extension of time to make the

election to apply § 168(k)(4) of the Internal Revenue Code to round 3 extension property, round 4 extension property, and round 5 extension property.

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, enacted as part of the Consolidated Appropriations Act, 2016, Division Q, Pub. L. No. 114-113, 129 Stat. 2242 (December 18, 2015) (PATH Act).

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is a C corporation and has a calendar year end. For the taxable years ended Date 1 (the A taxable year), Date 2 (the B taxable year), and Date 3 (the C taxable year), Taxpayer was the common parent of an affiliated group of corporations and filed consolidated federal income tax returns. Taxpayer's primary business is D. Taxpayer was in a taxable loss position for each taxable year beginning with the E taxable year.

Taxpayer placed in service qualified property (as defined in § 168(k)(2) before the application of § 168(k)(2)(D)(iii)) during the A, B, and C taxable years. However, on its consolidated federal income tax returns for the A, B, and C taxable years, Taxpayer made an election under § 168(k)(2)(D)(iii) not to deduct the additional first year depreciation for the following eligible classes of property:

1. Property in the 3-year class,
2. Property in the 5-year class,
3. Property in the 7-year class,
4. Property in the 10-year class,
5. Property in the 15-year class,
6. Property in the 20-year class,
7. Computer software (as defined in § 167(f)(1)(B)) for which a deduction is allowable under §167(a),
8. Water utility property, and
9. Qualified leasehold improvement property.

In a separate letter ruling dated today, Taxpayer is granted consent to revoke such elections within 60 calendar days from the date of the letter ruling. If Taxpayer revokes such elections, Taxpayer placed in service eligible qualified property during the A, B, and C taxable years.

Taxpayer has unused alternative minimum tax (AMT) credit from taxable years beginning before January 1, 2006. Taxpayer did not make the election to apply § 168(k)(4) (the § 168(k)(4) election) on its timely filed consolidated federal income tax return for its first taxable year ending after March 31, 20 , or for any subsequent

taxable year. Taxpayer's consolidated group was not a member of any other controlled group (as defined in section 2.05 of Rev. Proc. 2009-16, 2009-6 I.R.B. 449) on Date 1.

Taxpayer relied on its Vice President of Tax to make the § 168(k)(4) election timely. Taxpayer's Vice President of Tax supervised the preparation of, and reviewed, the consolidated federal income tax returns for the A, B, and C taxable years, including making the § 168(k)(4) election. He did not discuss the option of making this election with any existing tax advisors. Further, the existing tax advisors did not identify the ability of Taxpayer to make the § 168(k)(4) election. As a result, the § 168(k)(4) election was not made on Taxpayer's consolidated federal income tax returns for the A, B, and C taxable years.

The period of limitation on assessment for Taxpayer's A taxable year has been extended, by agreement under § 6501(c)(4), to Date 4, and the period of limitation on assessment for Taxpayer's B and C taxable years are open under § 6501(a). All of these dates are after the date of this letter ruling.

RULING REQUESTED

Taxpayer requests an extension of time under the rules of § 301.9100-3 of the Procedure and Administration Regulations to make the election to apply § 168(k)(4) for the taxable year ended Date 1, and subsequent taxable years.

LAW AND ANALYSIS

Section 331(c) of the American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, 126 Stat. 2313 (January 2, 2013), amended § 168(k)(4) by adding § 168(k)(4)(J) to the Code. Section 168(k)(4)(J) applied to property placed in service generally after 2012 and before 2014 (round 3 extension property). Section 125(c)(2) of the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295, 128 Stat. 4010 (December 19, 2014), amended § 168(k)(4) by adding § 168(k)(4)(K) to the Code. Section 168(k)(4)(K) applied to property placed in service generally after 2013 and before 2015 (round 4 extension property). Section 143(a)(3) of the PATH Act amended § 168(k)(4) by adding § 168(k)(4)(L) to the Code. Section 168(k)(4)(L) applied to property placed in service generally after 2014 and before 2016 (round 5 extension property). With the exception of revised dates, round 3 extension property, round 4 extension property, and round 5 extension property is property eligible for the additional first year depreciation deduction under § 168(k). Pursuant to § 168(k)(4)(J), (K), and (L), § 168(k)(4) increased only the AMT credit limitation under § 53(c) for round 3 extension property, round 4 extension property, and round 5 extension property. As a result, § 168(k)(4) allowed a C corporation or an S corporation to elect not to claim the additional first year depreciation deduction allowable under § 168(k) for round 3 extension property, round 4 extension property, and round 5 extension property and instead increase the AMT credit limitation under § 53(c). Accordingly, a C corporation or S corporation was able to claim unused

credits from taxable years beginning before January 1, 2006, that were allocable to AMT liabilities and accelerate such credits as either refundable credits in the case of a C corporation or credits against the § 1374(a) tax in the case of an S corporation.

Under § 168(k)(4)(A), the § 168(k)(4) election applies to a corporation's first taxable year ending after March 31, 2008, and to any subsequent taxable year. However, under § 168(k)(4)(J)(iii)(I), a taxpayer that has not made the § 168(k)(4) election under § 168(k)(4)(A) for its first taxable year ending after March 31, 2008, nor made the election under § 168(k)(H)(ii) for its first taxable year ending after December 31, 2008, nor made the election under § 168(k)(4)(I)(iii) for its first taxable year ending after December 31, 2010, may elect to have § 168(k)(4) apply to its first taxable year ending after December 31, 2012, and each subsequent taxable year. If the taxpayer makes the election under § 168(k)(4)(J)(iii)(I), § 168(k)(4) shall only apply to eligible qualified property which is round 3 extension property.

Pursuant to § 168(k)(4)(K)(ii)(I), a taxpayer that has a § 168(k)(4) election in effect for round 3 extension property is treated as having a § 168(k)(4) election in effect for round 4 extension property unless the taxpayer elects to not have § 168(k)(4) apply to round 4 extension property. Under § 168(k)(4)(L)(ii)(I), a taxpayer that has a § 168(k)(4) election in effect for round 4 extension property is treated as having a § 168(k)(4) election in effect for round 5 extension property unless the taxpayer elects to not have § 168(k)(4) apply to round 5 extension property.

Section 168(k)(4)(C)(iv) provides that all corporations that are treated as a single employer under § 52(a) (generally any controlled group of corporations within the meaning of § 1563(a), determined by substituting "more than 50 percent" for "more than 80 percent" each place it appears in § 1563(a)(1)) shall be treated as one taxpayer for purposes of § 168(k)(4) and as having elected the application of § 168(k)(4) if any such corporation so elects. Hereinafter, such group of corporations is referred to as a "controlled group." *See* section 2.05 of Rev. Proc. 2009-16, 2009-6 I.R.B. 449, 450.

Section 3.05 of Rev. Proc. 2009-16 provides guidance regarding the election to apply § 168(k)(4) by a controlled group. Section 3.05(2)(b) of Rev. Proc. 2009-16 provides that if all members of a controlled group are members of an affiliated group of corporations that file a consolidated return ("a consolidated group"), the common parent (within the meaning of § 1.1502-77(a)(1)(ii) of the Income Tax Regulations) of the consolidated group makes the § 168(k)(4) election on behalf of all members of the consolidated group. The common parent makes this election within the time and in the manner provided in section 3.01, 3.02, 3.03, or 3.04 of Rev. Proc. 2009-16, as applicable.

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.

In this case, Taxpayer is the common parent of an affiliated group of corporations that timely filed a consolidated federal income tax return for the taxable year ended Date 1. Further, Taxpayer's consolidated group on Date 1, was not a member of any other controlled group on that date. Thus, any election made by Taxpayer is binding on all members of Taxpayer's consolidated group on Date 1, and applies to Taxpayer's consolidated group for the taxable year ended Date 1, and any subsequent taxable year. (But see section 3.05(2)(d) of Rev. Proc. 2009-16 for guidance regarding members entering or leaving a controlled group.)

Taxpayer did not make the § 168(k)(4) election on its timely filed consolidated federal income tax return for its first taxable year ending after March 31, 20 , or for any subsequent taxable year. Pursuant to § 168(k)(4)(J)(iii)(I), Taxpayer may make the § 168(k)(4) election for its first taxable year ending after December 31, 20 , and each subsequent taxable year. If we grant Taxpayer an extension of time to make the election under § 168(k)(4)(J)(iii)(I) to apply § 168(k)(4) to round 3 extension property, that § 168(k)(4) election will be in effect for both round 4 extension property and round 5 extension property pursuant to § 168(k)(4)(K)(iii)(I) and § 168(k)(4)(L)(iii)(I), respectively. Thus, by Taxpayer making the § 168(k)(4) election for round 3 extension property, we conclude that Taxpayer is treated as having the § 168(k)(4) election in effect for round 4 extension property and round 5 extension property.

CONCLUSIONS

Based solely on the facts and representations submitted and the law and analysis as set forth above, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied with respect to round 3 extension property, round 4 extension property, and round 5 extension property. Accordingly, Taxpayer is granted 60 calendar days from the date of this letter to make the election under § 168(k)(4)(J)(iii)(I) to apply § 168(k)(4) to round 3 extension property. By Taxpayer making the election to apply § 168(k)(4) to round 3 extension property, Taxpayer is treated as having the § 168(k)(4) election in effect for round 4 extension property and round 5 extension property.

The election to apply § 168(k)(4) to round 3 extension property must be made by Taxpayer: (i) filing an amended consolidated federal income tax return for the A taxable year with a written statement indicating that Taxpayer is making the election under § 168(k)(4)(J)(iii) to apply § 168(k)(4) to round 3 extension property; and (ii) providing written notification to any partnership in which Taxpayer or any member of Taxpayer's consolidated group was a partner during the A taxable year that Taxpayer is making the election under § 168(k)(4)(J)(iii) to apply § 168(k)(4) to round 3 extension property. In addition, Taxpayer must: (i) file an amended consolidated federal income tax return for the B taxable year if Taxpayer or any member of Taxpayer's consolidated group placed in service round 4 extension property in the B taxable year; (ii) file an amended consolidated federal income tax return for the C taxable year if Taxpayer or any member of Taxpayer's consolidated group placed in service round 5 extension property in the C taxable year; and (iii) provide written notification to any partnership in which Taxpayer or any member of Taxpayer's consolidated group was a partner during the B or C taxable year that Taxpayer is treated as having the § 168(k)(4) election in effect for round 4 extension property or round 5 extension property, respectively. The amended consolidated federal income tax returns for the A, B, and C taxable years must include the adjustment to tax liability, the adjustment to taxable income for the amount of depreciation allowed or allowable for that taxable year for round 3 extension property, round 4 extension property, round 5 extension property, and any collateral adjustments to taxable income or tax liability.

A copy of this letter ruling must be attached to any federal income tax return to which it is relevant. A copy is enclosed for that purpose. Alternatively, a taxpayer filing its federal income tax return electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of the letter ruling.

Except as specifically ruled upon above, no opinion is expressed or implied concerning the 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: (i) any item of depreciable property placed in service by Taxpayer or any member of Taxpayer's consolidated group in the A, B, or C taxable year is eligible for the additional first year depreciation deduction provided by § 168(k)(1), (ii) any item of depreciable property placed in service by Taxpayer or any member of Taxpayer's consolidated group in the A, B, or C taxable year is, under § 168(k)(4), round 3 extension property, round 4 extension property, or round 5 extension property, as applicable, or (iii) Taxpayer properly determined the bonus depreciation amount under § 168(k)(4) in the A, B, or C taxable year.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer 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 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 to Taxpayer's authorized representatives. We are also 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)

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