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:B07
PLR-131321-17

Date:
March 05, 2018

Re: Request to Revoke the Election Not to Deduct the Additional First Year Depreciation

Legend

Parent =

S1 =

S2 =

S3 =

S4 =

S5 =

S6 =

S7 =

S8 =

S9 =

S10 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

A =

B =

C =

D =

Dear :

This letter responds to a letter dated October 13, 2017, submitted by Parent on behalf of itself and S1, S2, S3, S4, S5, S6, S7, S8, S9, and S10 (hereinafter collectively referred to as "Taxpayer") requesting the consent of the Commissioner of Internal Revenue to revoke Taxpayer's election under § 168(k) of the Internal Revenue Code not to deduct any additional first year depreciation that was made on its federal tax return for the taxable years ended Date 1, Date 2, and Date 3.

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 Taxpayer after 2007 and placed in service by Taxpayer before 2016.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer files a consolidated federal income tax return on a calendar year basis. 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 timely filed its consolidated federal income tax returns. Taxpayer's primary business is D.

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.

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 deduction 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.

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. Because Taxpayer did not have taxable income during these taxable years, the focus of Taxpayer's tax department was to slow deductions by electing not to deduct the additional first year depreciation. Further, even though Taxpayer has unused alternative minimum tax credit from taxable years beginning before January1, 2006, Taxpayer's Vice President of Tax did not discuss the option of making the election to apply § 168(k)(4) (the § 168(k)(4) election) with any existing tax advisors and they did not identify the ability of Taxpayer to make the § 168(k)(4) election. Consequently, Taxpayer made the election not to deduct the additional first year depreciation for the above-mentioned eligible classes of property on its consolidated federal income tax returns for the A, B, and C taxable years.

RULING REQUESTED

Taxpayer requests consent to revoke its elections under § 168(k)(2)(D)(iii) not to deduct additional first year depreciation under § 168(k)(1) for the above-mentioned eligible classes of qualified property placed in service by Taxpayer during the taxable years ended Date 1, Date 2, and Date 3.

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) of the Income Tax Regulations 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 (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)(7)(i) provides that an election not to deduct the additional first year depreciation for a class of property that is qualified property, once made, may be revoked only with the written consent of the Commissioner of Internal Revenue. To seek the Commissioner's consent, the taxpayer must submit a request for a letter ruling.

CONCLUSIONS

Based solely on the facts and representations submitted, we conclude that a revocation of Taxpayer's elections not to deduct any additional first year depreciation under § 168(k)(1) for the above-mentioned eligible classes of qualified property placed in service by Taxpayer during the taxable years ended Date 1, Date 2, and Date 3, is permitted under § 1.168(k)-1(e)(7)(i). Accordingly, Taxpayer is granted 60 calendar days from the date of this letter to revoke its elections not to deduct any additional first year depreciation for the above-mentioned eligible classes of qualified property placed in service by Taxpayer during the taxable years ended Date 1, Date 2, and Date 3. The revocations must be made in a written statement filed with Taxpayer's amended consolidated federal tax returns for the taxable years ended Date 1, Date 2, and Date 3.

A copy of this letter ruling must be attached to such amended returns. 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 (1) whether any item of depreciable property placed in service

by Taxpayer in the A, B, or C taxable year is eligible for any additional first year depreciation deduction under § 168(k), or (2) if any item of such property is eligible for the additional first year depreciation deduction, whether that item is qualified property as defined in § 168(k)(2).

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