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:

Telephone Number:

Refer Reply To:
CC:ITA:B07
PLR-115155-18

Date:
October 30, 2018

LEGEND:

P	=
X	=
Y	=
Z	=
Taxable Year	=
Firm	=
Date1	=
Date2	=

Dear :

This letter responds to a letter dated May 2, 2018 submitted by your representative on behalf of P, X, Y, and Z (collectively referred to as "Taxpayer"), requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations (1) to make the election under § 59(e)(1) of the Internal Revenue Code to deduct research and experimental expenditures described in § 174(a) paid or incurred by Taxpayer in the Taxable Year over a 10-year period, and (2) to make the election not to deduct the additional first year depreciation under § 168(k) for all classes of qualified property placed in service by Taxpayer in the Taxable Year.

All references in this letter to § 168(k) are treated as a reference to § 168(k) as in effect: (i) prior to amendment by § 13201 of the Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (December 22, 2017) (TCJA), and (ii) after 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). The amendments made to § 168(k) by § 143(b) of the PATH Act generally are effective for property placed in service after December 31, 2015. See

§ 143(b)(7)(A) of the PATH Act. The amendments made to § 168(k) by the TCJA generally are effective for qualified property acquired and placed in service after September 27, 2017. See § 13201(h)(1) of the TCJA.

FACTS

Taxpayer represents that the facts are as follows:

P is the common parent of an affiliated group of corporations that includes X, Y, and Z, and that files consolidated federal income tax returns on a fiscal year basis. Taxpayer uses the overall accrual method of accounting. For the Taxable Year, Taxpayer planned to make the election to deduct research and experimental expenditures paid or incurred by Taxpayer in the Taxable Year over a 10-year period under § 59(e)(1) and to make the election not to deduct the additional first year depreciation under § 168(k) for all classes of qualified property placed in service by Taxpayer in that taxable year.

P engaged Firm to prepare its consolidated federal income tax return for the Taxable Year. The due date (with extension) of P's consolidated federal income tax return for the Taxable Year was Date1. Taxpayer relied on Firm to prepare and timely file P's consolidated federal income tax return for the Taxable Year. The consolidated federal income tax return for the Taxable Year included an election statement for Taxpayer to make an election under § 59(e)(1) to deduct qualified research and experimental expenditures and an election under § 168(k)(7) to forgo the additional first-year depreciation for all classes of property placed in service during the Taxable Year.

Due to an inadvertent error that occurred in transmitting the return electronically, Firm did not timely e-file P's consolidated federal income tax return including the election statements. The return was instead filed late on Date2. Because Taxpayer did not timely file its federal tax return for the Taxable Year, Taxpayer failed to make the elections under § 168(k)(7) and § 59(e)(1).

RULINGS REQUESTED

Accordingly, Taxpayer requests an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations (1) to make the election under § 59(e)(1) to deduct research and experimental expenditures described in § 174(a) paid or incurred by Taxpayer in the Taxable Year over a 10-year period, and (2) to make the election not to deduct the additional first year depreciation under § 168(k) for all classes of qualified property placed in service by Taxpayer in the Taxable Year.

LAW AND ANALYSIS

For amounts paid or incurred in taxable years beginning prior to 2022, § 174(a) provides, in general, that a taxpayer may treat research and experimental expenditures which are paid or incurred by him during the taxable year in connection with his trade or business as expenses which are not chargeable to capital account. The expenditures so treated are allowed as a deduction.

Section 59(e)(1) allows a taxpayer, in general, to deduct ratably over the 10-year period any qualified expenditure to which an election under § 59(e) applies, beginning with the taxable year in which such expenditure was made.

Section 59(e)(2)(B) includes in the definition of "qualified expenditure" any amount which, but for an election under § 59(e), would have been allowable as a deduction for the taxable year in which paid or incurred under § 174(a) (relating to research and experimental expenditures).

Section 1.59-1(b)(1) of the Income Tax Regulations prescribes the time and manner of making the election under § 59(e). According to § 1.59-1(b)(1), an election under § 59(e) shall only be made by attaching a statement to the taxpayer's income tax return (or amended return) for the taxable year in which the amortization of the qualified expenditures subject to the § 59(e) election begins. The taxpayer must file the statement no later than the date prescribed by law for filing the taxpayer's original income tax return (including any extensions of time) for the taxable year in which the amortization of the qualified expenditures subject to the § 59(e) election begins and include certain required information.

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 placed in service by the taxpayer before January 1, 2020 (or January 1, 2021, for qualified property described in §§ 168(k)(2)(B) or 168(k)(2)(C).

Section 168(k)(7) allows a taxpayer to elect out of additional first year depreciation for any class of property placed in service during a taxable year.

Section 4.04 of Rev. Proc. 2017-33, 2017-19 I.R.B. 1236, 1240, provides guidance regarding the election under § 168(k)(7) not to deduct the additional first year depreciation (the § 168(k)(7) election). Section 4.04(1) of Rev. Proc. 2017-33 provides that the rules for making the § 168(k)(7) election are similar to the rules for making the election under § 168(k)(2)(D)(iii) as in effect before the enactment of the PATH Act. As a result, the § 168(k)(7) election applies to all qualified property that is the same class of property and placed in service in the same taxable year. Section 4.04(2) of Rev. Proc.

2017-33 provides that rules generally similar to the rules in § 1.168(k)-1(e)(2), (3), (5) and (7) apply for purposes of § 168(k)(7).

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 a taxable year beginning in 2012 provide 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(a), the Commissioner 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 rules for requesting extensions of time for regulatory 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 that granting relief will not prejudice the interests of the Government.

Taxpayer has represented that, in requesting an extension of time to make a separate late election under § 59(e) and § 168(k)(7) for the Taxable Year, it acted reasonably and in good faith and, further, there is no prejudice to the interest of the Government.

CONCLUSIONS

Based solely on the facts submitted and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Taxpayer is granted an extension of time to make an election under § 59(e) to deduct ratably over a 10-year period research and experimental expenditures described in § 174(a) paid or incurred for Taxable Year and to make an election under § 168(k)(7) to forgo additional first year depreciation for all classes of qualified property placed in service during the Taxable Year. In this regard, we will consider both of these elections

made by P for itself, X, Y, and Z on P's consolidated federal income tax return for the Taxable Year filed on Date2 to be timely made.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the facts described above (including other subsections of § 168). In particular, we express or imply no opinion on whether Taxpayer satisfies the requirements of § 59(e) and the regulations thereunder, or whether the expenditures at issue are research and experimental expenditures under § 174(a), or whether the amounts of the research and experimental expenditures at issue are correct. Furthermore, we express or imply no opinion on whether any item of depreciable property placed in service by Taxpayer during 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 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) of the Code 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 Taxpayer's authorized representative. We are also sending a copy of this letter ruling to the appropriate operating division director.

Sincerely,

Deena Devereux
Senior Technician Reviewer, Branch 7
Office of Associate Chief Counsel
(Income Tax and Accounting)

Enclosures (2):

Copy of this letter

Copy for section 6110 purposes