Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

Refer Reply To:
CC:PSI:B06 – PLR-102759-04
Date: June 29, 2004

Re:

Taxpayer =
A =
B =
SB/SE Official =

Dear :

This letter responds to a letter dated December 23, 2003, and supplemental correspondence, requesting the consent of the Commissioner of Internal Revenue to revoke Taxpayer's election not to deduct the 30-percent additional first year depreciation made on its B federal tax return for the taxable year ended A.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer, a calendar year end S-corporation, operates a rent-to own franchise. Taxpayer acquires and depreciates large amounts of rental assets in the course of renting these assets to customers. Taxpayer is an accrual basis taxpayer. For the federal tax return timely filed for the taxable year ended A, Taxpayer made an election not to deduct the 30-percent additional first year depreciation under section 168(k) of the Internal Revenue Code for all eligible classes of property acquired during that taxable year. Taxpayer made this election based on the advice of its qualified professional tax preparer.

Taxpayer's federal tax return for the B taxable year reflected large amount of losses from the disposition of rental assets on Form 4797, Sales of Business Property.

Due to these large losses and suspended loss carryovers, Taxpayer relied upon its tax preparer's advice to elect not to deduct the 30-percent additional first year depreciation on its B federal tax return.

Subsequent to filing Taxpayer's B federal tax return, the tax preparer that prepared such return became ill and, as a result, Taxpayer's account was assigned to another tax preparer. While reviewing Taxpayer's files, the new preparer realized that Taxpayer's B federal tax return was prepared incorrectly. Specifically, the new preparer discovered that Taxpayer had deducted both tax and book losses rather than only the tax losses.

When Taxpayer learned this fact, it submitted this request to revoke the election not to deduct the 30-percent additional first year depreciation made on Taxpayer's B federal tax return for the taxable year ended A.

LAW AND ANALYSIS

Section 168(k)(1) provides a 30-percent additional first year depreciation deduction for the taxable year in which qualified property is placed in service by a taxpayer.

Section 168(k)(2)(C)(iii) provides that a taxpayer may elect not to deduct the 30-percent 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)-1T(e)(2) of the temporary Income Tax Regulations.

Section 3.04 of Rev. Proc. 2002-33, 2002-1 C.B. 963, provides that an election not to deduct the additional first year depreciation for a class of property that is qualified property or Liberty Zone property placed in service during the taxable year is revocable only with the prior written consent of the Commissioner of Internal Revenue. To seek the Commissioner's consent, the taxpayer must submit a request for a letter ruling in accordance with the provisions of Rev. Proc. 2002-1, 2002-1 C.B. 1 (or any successor).

Taxpayer has requested permission to revoke its election not to deduct the 30-percent additional first year depreciation for qualified property placed in service by Taxpayer in the taxable year ended A. Taxpayer's request to revoke its election resulted from its original tax preparer incorrectly calculating tax losses by reporting both book and tax losses. This situation is analogous to those situations concerning taxpayers who have not made a particular election provided in the regulations because of inadequate or incorrect advice from either an attorney or accountant knowledgeable in tax matters and subsequently seek extensions of time under section 301.9100-1 of the Procedure and Administration Regulations in which to make the election.

Under section 301.9100-1, the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in sections 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 for 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 section 301.9100-2.

Section 301.9100-3(a) provides that requests for relief under section 301.9100-3 will be granted when the taxpayer provides the 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. The application of similar factors is appropriate to determine whether taxpayers may revoke elections made under section 168(k) not to deduct the additional first year depreciation.

CONCLUSIONS

Based solely on the facts and representations submitted, we conclude that Taxpayer acted reasonably and in good faith and that granting permission to revoke Taxpayer's election not to deduct the 30-percent additional first year depreciation for the taxable year ended A will not prejudice the interests of the government. Accordingly, Taxpayer is granted 60 calendar days from the date of this letter to revoke its election not to deduct the 30-percent additional first year depreciation for all classes of property placed in service by Taxpayer in the taxable year ended on A. The revocation must be made in a written statement filed with Taxpayer's amended federal tax return for the taxable year ended on A. In addition, a copy of this letter must be attached to such amended return. A copy is enclosed for that purpose.

Except as specifically ruled upon above, no opinion is expressed or implied concerning the tax consequences of the facts described above. Specifically, no opinion is expressed or implied on whether any item of depreciable property placed in service by Taxpayer in the taxable year ended A is eligible for the additional first year depreciation deduction.

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 representative. We are also sending a copy of this letter to the SB/SE Official.

Sincerely,

KATHLEEN REED

Kathleen Reed
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
6110 copy
copy for amended return