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Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B06
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Date:
November 18, 2004

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

Taxpayer	=
A	=
B	=
C	=
D	=
Date1	=
Date2	=
SB/SE Official	=

Dear :

This letter responds to a letter dated June 4, 2004, and supplemental correspondence, 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 certain qualified property placed in service in the taxable year ended Date1 (the D taxable year).

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is a A corporation engaged in the business of selling, servicing, and leasing heavy equipment. Taxpayer timely filed Form 1120S, U.S. Income Tax Return for an S Corporation, for the taxable year ended Date1, on Date2. On this return, Taxpayer claimed the 30-percent additional first year depreciation deduction provided by § 168(k) in the amount of $B. This amount represents the additional first year depreciation deduction for some 5-year property, and for all 7-year property, that is qualified property placed in service by Taxpayer during the D taxable year.

For the D taxable year, Taxpayer did not wish to claim any additional first year depreciation for qualified property included in asset class 57.0, Distributive Trades and Services, of Rev. Proc. 87-56, 1987-2 C.B. 674. On its Form 1120S for the D taxable year, Taxpayer did not claim any additional first year depreciation for qualified property included in asset class 57.0, Distributive Trades and Services, of Rev. Proc. 87-56. Property in asset class 57.0 has a class life of 9 years and is classified as 5-year property under section 168(e). Taxpayer inadvertently failed to attach the election statement to the return for the D taxable year with respect to the qualified property with a class life of 9 years. However, Taxpayer claimed the additional first year depreciation for 5-year property placed in service during the D taxable year other than assets with a class life of 9 years not realizing that it had to claim the additional first year depreciation for all 5-year property or had to elect not to take the additional first year depreciation for all 5-year property.

Subsequent to filing Taxpayer's D federal tax return, C, the tax preparer responsible for reviewing this return, informed Taxpayer of the proper procedure for making the election not to deduct the additional first year depreciation and the meaning of "class of property" for purposes of this election. Based on this new information, Taxpayer realized that it had incorrectly claimed the additional first year depreciation for some 5-year property, while not claiming such depreciation for other 5-year property, that is qualified property placed in service during the taxable year ended Date1.

RULING REQUESTED

Accordingly, Taxpayer requests 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) for all 5-year property placed in service by Taxpayer in the taxable year ended Date1.

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 as meaning, in general, each class of property described in § 168(e) (for example, 5-year property).

Section 1.168(k)-1T(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)-1T(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 D 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 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 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.

CONCLUSIONS

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, Taxpayer is granted 60 calendar days from the date of this letter to make the election not to deduct the additional first year depreciation for all 5-year property placed in service by Taxpayer in the taxable year ended Date1. This election must be made by Taxpayer filing an amended federal tax return for that taxable year, with a revised Form 4562 and a statement indicating that Taxpayer is electing not to deduct the additional first year depreciation for all 5-year property placed in service in the taxable year ended Date1. In addition, Taxpayer's shareholders' federal tax returns for the taxable year that included Date1 must be amended as well.

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. Specifically, no opinion is expressed or implied on whether any item of depreciable property placed in service in the taxable year ended Date1, is eligible for the additional first year depreciation deduction.

In accordance with the power of attorney, we are sending copies of this letter to Taxpayers' authorized representative. We are also sending a copy of this letter to the SB/SE Official.

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.

Sincerely,

HEATHER C. MALOY

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

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