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:7
PLR-109696-16

Date:
August 11, 2016

Re: Request to revoke the election not to deduct the additional first year depreciation

Legend

Taxpayer	=	
A	=	
Year1	=	
Year2	=	
Date1	=	
Date2	=	
Date3	=	

Dear :

This letter ruling responds to a letter dated March 22, 2016, and supplemental correspondence, submitted by Taxpayer, requesting the consent of the Commissioner of Internal Revenue to revoke Taxpayer's election not to deduct the additional first year depreciation provided by § 168(k) of the Internal Revenue Code for all classes of qualified property placed in service by Taxpayer during the taxable years ended Date1, Date2, and Date3.

All references in this letter ruling to §168(k) are treated as a reference to § 168(k) as in effect before the date of the enactment 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).

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer, a C corporation, is the common parent of an affiliated group that files a consolidated federal income tax return on a calendar-year basis. Taxpayer's overall method of accounting is the accrual method.

Taxpayer is in the business of A. Taxpayer placed in service qualified property (as defined in § 168(k)(2)) during the taxable years ended Date1 (Year1 taxable year), through Date3 (Year2 taxable year). Taxpayer's taxable year ended Date1, is a taxable year for which the period of limitation on assessment under § 6501(a) has expired.

On its timely filed consolidated federal income tax returns for the Year1 through Year2 taxable years, Taxpayer made the election under § 168(k)(2)(D)(iii) not to claim the 50-percent or 100-percent additional first year depreciation deduction, as applicable, for all classes of qualified property placed in service during those taxable years.

Taxpayer made this election because, at the time it filed these returns, its tax department lacked the resources (*e.g.*, manpower and information) to determine whether each of the thousands of tangible assets placed in service each year constituted qualified property under § 168(k) eligible for the additional first year depreciation deduction. For example, Taxpayer was unable to determine if the depreciable tangible property at issue was qualified leasehold improvement property, or new or used property.

Taxpayer did not make the election under § 168(k)(4) for any class of property placed in service in its Year1 through Year2 taxable years or for any class of property that is subject to this private letter ruling request. Further, Taxpayer's overall federal income tax posture for the taxable years at issue was a net operating loss (NOL) position with a NOL carryforward.

RULING REQUESTED

Consequently, Taxpayer requests to revoke the election not to deduct any additional first year depreciation provided by § 168(k) for all classes of qualified property placed in service by Taxpayer during the taxable years ended Date1, Date2, and Date3.

LAW AND ANALYSIS

Section 168(k)(1), provides a 50-percent additional first year depreciation deduction for the placed-in-service year for qualified property (i) acquired by a taxpayer

after December 31, 2007, and before September 9, 2010, or acquired by a taxpayer generally after December 31, 2011, and placed in service before January 1, 2015, 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 (C)), and before January 1, 2015 (or January 1, 2016, for qualified property described in § 168(k)(2)(B) or (C)).

Section 168(k)(5) provides a 100-percent additional first year depreciation deduction for the placed-in-service year for qualified property acquired by a taxpayer after September 8, 2010, and generally before January 1, 2012, and placed in service by the taxpayer after September 8, 2010, and before January 1, 2012 (or January 1, 2013, for qualified property described in § 168(k)(2)(B) or (C)). *See* section 3 of Rev. Proc. 2011-26, 2011-16 I.R.B. 664, 665.

Section 168(k)(2)(D)(iii) provides that a taxpayer may elect not to deduct the 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)-1(e)(2) of the Income Tax Regulations as meaning, 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, and section 3.01 of Rev. Proc. 2011-26, 2011-16 I.R.B. at 665 (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 election not to deduct any additional first year depreciation under § 168(k)(1) and (k)(5) for all classes of qualified property placed in service by Taxpayer in the taxable years ended Date1, Date2, and Date3, 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 election not to deduct the additional first year depreciation for all classes of qualified property placed in service by Taxpayer in the taxable years ended Date1, Date2, and Date3. The revocation must be made in a written statement that is filed: (i) with Taxpayer’s amended consolidated federal income tax return(s) for the taxable year(s) ended Date1, Date2, and Date3, that are open taxable year(s) as of the date provided in the preceding sentence; and (ii) with the IRS office where Taxpayer filed its original consolidated federal income tax return(s) for the taxable year(s) ended Date1, Date2, and Date3, that are closed taxable year(s) as of the date provided in the

preceding sentence. In addition, a copy of this letter ruling must be attached to the written statement. 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 under any other provisions of the Code (including other subsections of § 168). Specifically, no opinion is expressed or implied on whether any item of depreciable property placed in service by Taxpayer in the taxable years ended Date1, Date2, and Date3, is eligible for the 50-percent or 100-percent additional first year depreciation deduction under § 168(k).

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 Director, Large Business & International Division (LB&I).

This letter 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,

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