Internal Revenue Service

Number: **201723007**
Release Date: 6/9/2017

Index Number: 9100.04-00

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-128511-16

Date:
February 22, 2017

Re:

LEGEND:

Parent =
S1 =
Year 1 =
Year 2 =
Year 3 =
Year 4 =
Year 5 =
Year 6 =
Year 7 =

Dear :

This letter responds to a letter dated September 13, 2016, and subsequent correspondence, submitted by Parent on behalf of itself and S1 (hereinafter, Parent and S1 are collectively referred to as Taxpayer) 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 all classes of qualified property placed in service during the taxable years Year 1, Year 2, Year 3, Year 4, Year 5, Year 6, and Year 7.

Unless otherwise indicated, all references in this letter to § 168 are treated as a reference to § 168 of the Internal Revenue Code as in effect on the day 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:

Parent is the common parent of an affiliated group of corporations that includes S1. The affiliated group of corporations files a consolidated federal income tax return on a calendar-year basis. Taxpayer's principal business activity is the manufacturing and marketing of beauty and related products. As of the date of filing this letter ruling request, Taxpayer's taxable years Year 1, Year 2, Year 3, Year 4, and Year 5 are taxable years for which the period of limitation on assessment under § 6501(a) has expired.

Taxpayer placed in service qualified property (as defined in § 168(k)(2) before the application of § 168(k)(2)(D)(iii)) that is 3-year, 5-year, 7-year, 10-year, or 15-year property, qualified leasehold improvement property and computer software, during the taxable years Year 1, Year 2, Year 3, Year 4, Year 5, Year 6, and Year 7. For each of these taxable years, Taxpayer decided to make the election under § 168(k)(2)(D)(iii) not to claim the additional first year depreciation under §§ 168(k)(1) or 168(k)(5), as applicable, with respect to each class of qualified property.

On Parent's timely filed consolidated federal income tax returns for the taxable years Year 1, Year 2, Year 3, Year 4, Year 5, Year 6, and Year 7, Taxpayer did not deduct the additional first year depreciation for qualified property placed in service during those years. However, Taxpayer inadvertently failed to attach to the return for the taxable years Year 1, Year 2, Year 3, Year 4, Year 5, Year 6, and Year 7, the election statement not to claim the additional first year depreciation deduction for such qualified property, as required by § 1.168(k)-1(e)(3)(ii) of the Income Tax Regulations.

For the placed-in-service year and each subsequent taxable year, Taxpayer determined the depreciation deductions under § 168 for the qualified property at issue as if Taxpayer had made timely the aforementioned election not to deduct the additional first year depreciation. Taxpayer has disposed of some of the property subject to this ruling request. In determining the gain or loss for such disposed property, Taxpayer reduced the basis of such property for the greater of the allowed or allowable depreciation as if that election had been made timely by Taxpayer.

Further, the tax provision in Taxpayer's financial statements for the taxable years at issue was calculated on the basis that Taxpayer had made timely the aforementioned

election not to deduct the additional first year depreciation for the qualified property at issue.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to §§ 301.9100-1 and 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 classes of qualified property placed in service by Taxpayer during the taxable years Year 1, Year 2, Year 3, Year 4, Year 5, Year 6, and Year 7.

LAW AND ANALYSIS

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 (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, 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 168(k)(2)(C)) and before January 1, 2015 (or January 1, 2016, for qualified property described in §§ 168(k)(2)(B) or 168(k)(2)(C)).

Section 168(k)(5) provides a 100-percent additional first year depreciation deduction in 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 generally before January 1, 2012. *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) 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)(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 the taxable years Year 1, Year 2, Year 3, Year 4, Year 5, Year 6, and Year 7 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 of Internal Revenue 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 under § 168(k) for all classes of property placed in service by Taxpayer during the taxable years Year 1, Year 2, Year 3, Year 4, Year 5, Year 6, and Year 7, that qualify for the additional first year depreciation deduction. This election must be made by Parent by: (i) filing an amended consolidated federal income tax return for each such taxable year that is an open taxable year as of the date provided in the preceding sentence, with a written statement indicating that Taxpayer is electing not to deduct the additional first year depreciation and identifying the class(es) of property for which the election is made; and (ii) filing a written statement with such information with the IRS office where Parent filed its original consolidated federal income tax return(s) for any taxable year(s) at issue that is a closed taxable year(s) as of the date provided in the preceding sentence.

A copy of this letter ruling must be attached to any federal income tax return to which it is relevant or to the written statement, as applicable. 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 set forth above, no opinion is expressed or implied concerning the federal 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 during the taxable years at issue is eligible for the additional first year depreciation deduction.

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 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.

In accordance with the power of attorney, we are sending a copy of this letter ruling to Parent's authorized representatives. We also are sending a copy of this letter ruling to the appropriate operating division director.

Sincerely,

Kathleen Reed

KATHLEEN REED
Branch Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax and Accounting)

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