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Department of the Treasury
Washington, DC 20224

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

Telephone Number:

Refer Reply To:
CC:ITA:B07
PLR-115221-19

Date:
August 29, 2019

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

Legend

Parent =
Taxpayer =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
A =
B =

Dear :

This letter responds to a letter dated June 27, 2019, and subsequent correspondence, submitted by Parent on behalf of Taxpayer requesting the consent of the Commissioner of Internal Revenue to revoke Taxpayer's election under § 168(k) of the Internal Revenue Code not to deduct the additional first year depreciation that was made on Parent's consolidated federal income tax return for the taxable year ended Date 1 (the A taxable year).

All references in this letter ruling to § 168(k) are treated as a reference to § 168(k) as in effect prior to 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).

All references in this letter ruling to § 382 are treated as a reference to § 382 as in effect prior to amendment by the Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (December 22, 2017).

FACTS

Parent represents that the facts are as follows:

Parent is the common parent of an affiliated group of corporations, including Taxpayer, that files a consolidated federal income tax return. Parent files its consolidated federal income tax return on a calendar year basis and uses an accrual method of accounting. Parent's primary business is B. For the A taxable year, Parent timely filed its consolidated federal income tax return.

As of the date of this letter ruling, the period of limitation on assessment for Parent's A taxable year is open under § 6501(a).

Taxpayer placed in service qualified property (as defined in § 168(k)(2) before the application of § 168(k)(2)(D)(iii)) during the A taxable year. However, on its consolidated federal income tax return for the A taxable year, Parent on behalf of Taxpayer made an election under § 168(k)(2)(D)(iii) not to deduct the additional first year depreciation for all classes of property that are qualified property and placed in service by the Taxpayer in the A taxable year. The tax director of Parent decided to make this election because he believed that the net operating loss ("NOL") carryforward available in A was large enough to offset the taxable income of Parent's consolidated group for the A taxable year.

Subsequent to the filing of Parent's consolidated federal income tax return for the A taxable year, Parent underwent a change of control within the meaning of § 382. As a result of studies to determine the § 382 limitation that resulted from this change of control, other changes in control within the meaning of § 382 were identified that occurred on Date 2, Date 3, and Date 4. All of these dates were prior to the A taxable year.

At the time Parent's tax director prepared the consolidated federal income tax return for the A taxable year, Parent's tax director was not aware of the previous changes in control that occurred on Date 2, Date 3, and Date 4, and did not account for NOL carryforward impairments attributable to such changes in control when preparing the consolidated federal income tax return for the A taxable year.

Had Parent's tax director known of the changes in control that occurred on Date 2, Date 3, and Date 4, Parent on behalf of Taxpayer would not have made the election under § 168(k)(2)(D)(iii) not to deduct the additional first year depreciation for all classes of property that are qualified property and placed in service by Taxpayer during the taxable year ended Date 1.

RULING REQUESTED

On behalf of Taxpayer, Parent requests consent to revoke Taxpayer's election under § 168(k)(2)(D)(iii) not to deduct the additional first year depreciation for all classes of property that are qualified property and placed in service by Taxpayer during the taxable year ended Date 1.

LAW AND ANALYSIS

Section 168(k)(1) allowed, 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, 2016, and (ii) placed in service by the taxpayer before September 9, 2010, or after December 31, 2011 (or after December 31, 2012, for qualified property described in § 168(k)(2)(B) or § 168(k)(2)(C)) and before January 1, 2016 (or January 1, 2017, for qualified property described in § 168(k)(2)(B) or 168(k)(2)(C)).

Section 168(k)(2)(D)(iii) provided that a taxpayer may elect not to deduct the additional first year depreciation for any class of property placed in service by the taxpayer during the taxable year. The term "class of property" is defined in § 1.168(k)-1(e)(2) of the Income Tax Regulations to mean, among other things, each class of property described in § 168(e) (for example, 5-year property).

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.

CONCLUSION

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) for all classes of property placed in service by Taxpayer during the taxable year ended Date 1, 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 such election. The revocation must be made in a written statement filed with Parent's amended consolidated federal income tax return for the taxable year ended Date 1.

A copy of this letter ruling must be attached to such amended return. 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 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 (1) whether any item of depreciable property placed in service by Taxpayer in the A taxable year is eligible for the additional first year depreciation deduction under § 168(k), (2) whether Taxpayer's classification of any item of depreciable property under § 168(e) or Rev. Proc. 87-56, 1987-2 C.B. 674, is correct, (3) whether Parent underwent changes in control within the meaning of § 382 on Date 2, Date 3, or Date 4, or (4) the tax consequences of such changes in control.

The rulings contained in this letter are based upon information and representations submitted by Parent 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 copies of this letter ruling to Parent's authorized representatives. We are also sending a copy of this letter ruling to the appropriate operating division director.

Sincerely yours,

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