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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:ITA:B07
PLR-141836-07
Date: December 6, 2007

Re: Request for Private Letter Ruling Regarding Commercial Revitalization Deduction

Taxpayer	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
Date 9	=
$A	=
City	=
Agency	=
Official	=
Project	=
Building 1	=
Building 2	=
Building 3	=
State	=
Year	=

Dear :

This letter is in response to your letter dated Date 1, and subsequent correspondence, submitted on behalf of Taxpayer, requesting rulings relating to the commercial revitalization deduction under § 1400I of the Internal Revenue Code.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is a limited liability company that files its Federal income tax returns with a taxable year ending December 31 and uses the cash method of accounting.

Taxpayer developed, and owns and operates, Project, which is a nonresidential project consisting of retail space and office space. The buildings in the Project that were constructed and are at issue are Building 1, Building 2, and Building 3 (hereinafter, collectively referred to as Buildings 1-3). These buildings were placed in service by Taxpayer during Year and are located in City. City is designated a renewal community under § 1400E. In choosing to develop the Project, one of the important reasons involved in that decision was Taxpayer's understanding that the Project would be granted an allocation of commercial revitalization expenditures, based upon conversations with officials of City.

In State, the renewal community collects the commercial revitalization application from the owner of a project for which the owner wishes to receive an allocation of commercial revitalization expenditures and forwards the application, along with the evaluation of the renewal community, to the Agency, which is the commercial revitalization agency for State. The Agency ensures that the application is complete, meets the program requirements as identified in the qualified allocation plan, and determines if an allocation of commercial revitalization expenditures should be awarded.

For Year, the final date for a renewal community to file commercial revitalization applications with the Agency was Date 3, and the final meeting of the Agency was Date 5.

On Date 2, Taxpayer submitted to City a commercial revitalization application for Buildings 1-3. City received Taxpayer's application before City began evaluating the commercial revitalization applications that City received for Year. City reviewed Taxpayer's application and sent it, together with a recommendation to allocate commercial revitalization expenditures to Taxpayer for Buildings 1-3, to the Agency on Date 4, which was after the Agency's final filing date for commercial revitalization applications, and was one day before the Agency's final meeting, for Year. Taxpayer's application was the only commercial revitalization application received by the Agency for a Year commercial revitalization expenditure allocation from City. An official of City represents that City was unaware of the Agency's final filing deadline for Year.

Consequently, the Agency did not have sufficient time to adequately review Taxpayer's application before the Agency's final meeting on Date 5, for Year. Subsequently, the Agency determined that Taxpayer's application was not fully complete and sent a letter to Taxpayer on Date 6, which was a few days before the end of Year, requesting certain items in addition to what had been submitted. In any event, there was not enough time at the end of Year to award the allocation of commercial revitalization expenditures to Taxpayer for Buildings 1-3. Taxpayer provided the additional items to the Agency after Year.

By letter dated Date 7, the Agency notified Taxpayer that the Agency had awarded commercial revitalization expenditures in the total amount of $A to Taxpayer for Buildings 1-3. Date 7 is in a year subsequent to Year, the placed-in-service year of Buildings 1-3. This award, however, was conditioned on Taxpayer receiving a private letter ruling from the Internal Revenue Service that the Agency may allocate commercial revitalization expenditures for Year to Taxpayer for Buildings 1-3 in a year subsequent to Year.

The letter dated Date 7, however, did not contain all of the information required by section 4.02(2) of Rev. Proc. 2003-38, 2003-1 C.B. 1017, for a placed-in-service year allocation. Consequently, on Date 8, the Agency reissued a placed-in-service year allocation document (i) incorporating the document that awarded the allocation in the total amount of $A to Taxpayer for Buildings 1-3 by the Agency on Date 7, (ii) stating that the allocation in the total amount of $A is from the Year commercial revitalization expenditure ceiling for City, and (iii) containing all of the information described in section 4.02(2) of Rev. Proc. 2003-38, including the penalties of perjury certification statement that was dated and signed on Date 8 by an authorized official of the Agency. This allocation is contingent upon the Service's determination that Taxpayer is eligible to elect to claim the commercial revitalization deduction under § 1400I on Taxpayer's amended federal income tax return for the Year taxable year with respect to Buildings 1-3.

RULINGS REQUESTED

Taxpayer requests the Service issue the following rulings:

(1) The allocation of commercial revitalization expenditures in the amount of $A that was approved on Date 7, and made on Date 8 (pursuant to section 4.02(1) of Rev. Proc. 2003-38), by the Agency to Taxpayer for Buildings 1-3 is treated as a valid allocation for Year, the calendar year in which Taxpayer placed in service Buildings 1-3 in City.

(2) An extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations is granted to Taxpayer to make an election under § 1400I(a)(2) to amortize the qualified revitalization expenditures attributable to Building 1, Building 2, and Building 3 ratably over the 120-month period beginning with the month in which each such building was placed in service by Taxpayer.

LAW AND ANALYSIS

Section 1400I allows a taxpayer to elect to recover a portion of the cost of a qualified revitalization building that is placed in service in a renewal community using a more accelerated method of depreciation than is otherwise allowable under § 168.

Pursuant to § 1400I(a), a taxpayer may elect either (1) to deduct one-half of any qualified revitalization expenditures chargeable to a capital account with respect to any qualified revitalization building for the taxable year in which the building is placed in service, or (2) to amortize all of these expenditures ratably over the 120-month period beginning with the month in which the building is placed in service.

The term "qualified revitalization building" is defined in § 1400(b)(1) as meaning any building and its structural components if (A) the building is placed in service by the taxpayer in a renewal community and the original use of the building begins with the taxpayer, or (B) the building is substantially rehabilitated (within the meaning of § 47(c)(1)(C)) by the taxpayer and is placed in service by the taxpayer after the rehabilitation in a renewal community.

Pursuant to § 1400I(b)(2)(A), the term "qualified revitalization expenditure" means any amount properly chargeable to a capital account for property for which depreciation is allowable under § 168 (without regard to § 1400I) and that is (i) nonresidential real property (as defined in § 168(e)) or (ii) section 1250 property (as defined in § 1250(c)) that is functionally related and subordinate to the nonresidential real property.

Under § 1400I(d), the commercial revitalization agency for each state is permitted to allocate up to $12 million of commercial revitalization expenditure amounts with respect to each renewal community located within the state for each calendar year after 2001 and before 2010.

Pursuant to § 1400I(c), the aggregate amount that may be treated as qualified revitalization expenditures with respect to any qualified revitalization building cannot exceed the lesser of (1) $ 10 million, or (2) the commercial revitalization expenditure amount allocated to the building under § 1400I by the commercial revitalization agency for the state in which the building is located. If the amount of the allocation exceeds the

amount properly chargeable to a capital account for the qualified revitalization building, the commercial revitalization expenditure amount is limited to the amount properly chargeable to a capital account for that building. A taxpayer may make a commercial revitalization deduction election for a qualified revitalization building only to the extent that qualified commercial revitalization expenditure amounts are allocated for the building.

Rev. Proc. 2003-38 provides the time and manner for states to make allocations under § 1400I of commercial revitalization expenditure amounts to a qualified revitalization building. Rev. Proc. 2003-38 also provides that a commercial revitalization agency may make a placed-in-service year allocation in accordance with section 4 of Rev. Proc. 2003-38 or a carryover allocation in accordance with section 6 of Rev. Proc. 2003-38.

Section 4.01 of Rev. Proc. 2003-38 provides that a placed-in-service year allocation is made in the calendar year in which the qualified revitalization building is placed in service by the taxpayer. Pursuant to section 4.02(1) of Rev. Proc. 2003-38, a placed-in-service year allocation is made for a qualified revitalization building when an allocation document containing the information set forth in section 4.02(2) of Rev. Proc. 2003-38 is completed, signed, and dated by an authorized official of the commercial revitalization agency.

In this case, during Year, Taxpayer placed Buildings 1-3 in service in City and submitted its commercial revitalization application for these buildings to City before City began evaluating the commercial revitalization applications that it received for Year. However, City submitted Taxpayer's application, along with City's recommendation, to the Agency after the Agency's final filing date for commercial revitalization applications for Year and on the date before Agency's final meeting for Year. City represents that it was unaware of the Agency's final filing deadline for Year commercial revitalization applications. Accordingly, because of this late submission by City, the Agency was unable in any event to make a timely placed-in-service year allocation of commercial revitalization expenditures to Taxpayer for Buildings 1-3.

Section 7 of Rev. Proc. 2003-38 explains how a taxpayer makes the election under § 1400I(a). Section 7.02(1) of Rev. Proc. 2003-38 provides that this election must be made by the due date (including extensions) of the federal tax return for the taxable year in which the qualified revitalization building is placed in service by the taxpayer. The election must be made in the manner prescribed in the instructions for Form 4562, Depreciation and Amortization.

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 and the relevant law and analysis set forth above, we conclude that:

(1) Due to City's unintentional late submission of Taxpayer's commercial revitalization application for Buildings 1-3 to the Agency, the allocation of commercial revitalization expenditures in the total amount of $A that was approved on Date 7, and made on Date 8 (pursuant to section 4.02(1) of Rev. Proc. 2003-38), by the Agency to Taxpayer for Buildings 1-3 is treated as a valid allocation for Year, the calendar year in which Taxpayer placed in service Buildings 1-3 in City.

(2) The requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Taxpayer is granted 60 calendar days from the date of this letter to make the election under § 1400I(a)(2) to amortize the qualified revitalization expenditures attributable to Building 1, Building 2, and Building 3 ratably over the 120-month period beginning with the month in which each such building was placed in service by Taxpayer provided Buildings 1-3 each is a qualified revitalization building. This election must be made by Taxpayer filing an amended Federal income tax return for the taxable year ended Date 9, together with an amended Form 4562, Depreciation and Amortization. This amended return must include the adjustment to taxable income for the § 1400I(a)(2) election and any collateral adjustments to taxable income or to the tax liability (for example, the amount of depreciation allowed or allowable under § 168 in Year for Buildings 1-3). Taxpayer also must file amended Federal income tax returns for any affected succeeding taxable years and such amended returns must include any collateral adjustments to taxable income or to tax liability.

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: (i) whether Building 1, Building 2, and Building 3 each is a qualified revitalization building; and (ii) what costs of Building 1, Building 2, and Building 3 constitute qualified revitalization expenditures.

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 appropriate 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,

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