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-100164-10

Date:
May 07, 2010

Re:

Taxpayer =
A =
B =
Date1 =
Date2 =
LMSB Official =

Dear :

This letter responds to a letter dated December 21, 2009, and supplemental correspondence, submitted by Taxpayer, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the election to use the alternative depreciation system (ADS) under § 168(g)(7) of the Internal Revenue Code for 5-year property, 15-year property, and residential rental property placed in service in the taxable year ended Date1.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer owns and operates an apartment community known as A located in B (hereinafter referred to as the "Property"). The Property, which is a residential rental property, and related 5-year property and 15-year property were placed in service on Date2. These were the only depreciable properties placed in service by Taxpayer in the taxable year ended Date1.

For the taxable year ended Date1, Taxpayer determined its depreciation deductions attributable to the properties using the general depreciation system of § 168(a) instead of the ADS. Taxpayer, however, had intended to elect to use the ADS

to depreciate costs attributable to the properties due to cost overruns related to the construction of the Property.

Taxpayer relied on a qualified tax professional to prepare its federal income tax return for the taxable year ended Date1. When this return was filed, neither Taxpayer nor the tax return preparer realized that Taxpayer did not elect to use the ADS to determine depreciation for the classes of properties placed in service during the taxable year ended Date1. Taxpayer discovered the error when the income tax return for the following year was being prepared.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the election to use the ADS under § 168(g)(7) for 5-year property, 15-year property, and residential rental property placed in service in the taxable year ended Date1.

LAW AND ANALYSIS

Section 167(a) provides that there shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear, and obsolescence of property used in the taxpayer's trade or business.

The depreciation deduction provided by § 167(a) for tangible property placed in service after 1986 generally is determined under § 168. Section 168 prescribes two methods of accounting for determining depreciation allowances. One method is the general depreciation system in § 168(a), and the other method is the ADS in § 168(g).

In the case of any property to which an election under § 168(g)(7) applies, § 168(g)(1) provides that the depreciation deduction provided by § 167(a) is determined under the ADS. Pursuant to § 168(g)(2), the ADS is depreciation determined by using the straight line method (without regard to salvage value), the applicable convention determined under § 168(d), and a recovery period determined under the table prescribed in § 168(g)(2)(C). For most personal property, the recovery period is the property's class life. Section 168(g)(3) provides special rules for determining class life.

Section 168(g)(7) permits a taxpayer to elect for any class of property for any taxable year to use the ADS for determining depreciation for all property in that class placed in service during that taxable year. However, in the case of nonresidential real property, the election is made separately with respect to each property. Once made, an election to use ADS is irrevocable.

Section 301.9100-7T(a)(1) provides that the election under § 168(g)(7) must be made for the taxable year in which the property is placed in service. Section 301.9100-

7T(a)(2)(i) further provides that this election must be made by the due date (including extensions) of the tax return for the taxable year for which the election is to be effective. Section 301.9100-7T(a)(3)(i) provides that the election under § 168(g)(7) is made by attaching a statement to the tax return for the taxable year for which the election is to be effective.

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 to use the ADS under § 168(g)(7) for determining depreciation for 5-year property,15-year property, and residential rental property placed in service in the taxable year ended Date1. This election must be made by Taxpayer filing an amended federal tax return for the taxable year ended Date1, with a statement indicating that Taxpayer is electing to use the ADS under § 168(g)(7) for determining depreciation for 5-year property, 15-year property, and residential rental property placed in service in the taxable year ended Date1.

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 Taxpayer's classification of each item of depreciable property placed in service by Taxpayer during the taxable year ended Date1 is proper under § 168(e), or whether Taxpayer's determination of the recovery period for each item of 5-year property, 15-year property, and residential rental property placed in service by Taxpayer during the taxable year ended Date1 is proper under § 168(g)(2)(C) and (3) for purposes of determining depreciation under the ADS.

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 LMSB Official.

This ruling is directed only to Taxpayer. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Willie E. Armstrong, Jr.

Willie E. Armstrong, Jr.
Senior Technician Reviewer, Branch 7
Office of Associate Chief Counsel
(Income Tax and Accounting)

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