

Internal Revenue Service

Department of the Treasury
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Date:
June 24, 2011

Re: Request for Extension of Time to Make the Election to Apply § 168(g)(7)

Legend

Taxpayer =

Date 1 =

Date 2 =

Date 3 =

A =

B =

C =

Dear _____ :

This letter responds to a letter dated December 15, 2010, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations for Taxpayer to make an election under § 168(g)(7) of the Internal Revenue Code to use the alternative depreciation system (“ADS”) for real and personal tangible depreciable property placed in service during the taxable year ended Date 1 (the A taxable year).

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is a limited partnership and has a calendar year end. Taxpayer was formed on Date 3, to acquire, own, maintain, and operate an apartment community known as B located in C (the "Property"). Construction was completed and the Property was placed in service on Date 2, which is during the A taxable year.

At the time Taxpayer was formed as well as at all relevant times during the initial planning for the Property and the construction of the Property, Taxpayer intended to use the general depreciation system ("GDS") under § 168 ("MACRS") instead of electing to use the ADS as long as the construction costs stayed within the preliminary budget and projections of the project. When the project was completed, there were substantial cost overruns which changed the financial projections of the project. Due to the cost overruns, the projections were changed and Taxpayer intended to elect the ADS to depreciate the Property.

For the A taxable year, Taxpayer relied upon an outside tax preparer to prepare its A federal partnership tax return, including any elections. However, this return did not include an election under § 168(g)(7) to use the ADS to depreciate the Property because Taxpayer's outside tax preparer did not utilize the updated projections, which the outside tax preparer had access to since his CPA firm created all of Taxpayer's financial statements, in order to determine the depreciation method that should be used for the Property. The Property consists of real property and personal property that are classified as 5-year property, 15-year property, or residential rental property for MACRS purposes. Taxpayer's A federal partnership return was timely filed.

RULING REQUESTED

Taxpayer requests an extension of time under the rules of § 301.9100-3 of the Procedure and Administration Regulations to make the election under § 168(g)(7) to use the ADS to depreciate the real and personal tangible depreciable property placed in service during the taxable year ended Date 1.

LAW AND ANALYSIS

Section 168(g)(1)(E) provides that in the case of any property to which an election under § 168(g)(7) applies, the depreciation deduction provided by § 167(a) shall be determined under the ADS. See § 168(g)(2) for how depreciation is determined under the ADS.

If a taxpayer makes an election under § 168(g)(7) for any class of property for any taxable year, § 168(g)(7)(A) provides that the ADS shall apply to all property in such

class placed in service during such taxable year. Notwithstanding the preceding sentence, in the case of nonresidential real property or residential rental property, such election may be made separately with respect to each property.

Section 168(g)(7)(B) provides that once an election under § 168(g)(7) is made it shall be irrevocable.

Section 301.9100-7T(a)(1) of the Procedure and Administration Regulations provides that the election under § 168(g)(7) must be made for the taxable year in which the property is placed in service. Pursuant to § 301.9100-7T(a)(2), this election must be made by the due date (including extensions) of the tax return for the placed-in-service year. In accordance with the instructions for the A Form 4562, Depreciation and Amortization, a taxpayer makes the election to use the ADS for assets placed in service during the A taxable year by completing line 20 of Form 4562.

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 under § 168(g)(7) to use the ADS to depreciate the real and personal tangible depreciable property placed in service during the taxable year ended Date1. This election must be made by Taxpayer filing an amended federal tax return for the taxable year ended Date 1, in a manner that is consistent with the ADS election.

Except as specifically set forth above, no opinion is expressed or implied concerning the tax consequences of the facts described above under any other provisions of the Code. Specifically, no opinion is expressed or implied on whether the

items of depreciable property placed in service by Taxpayer in the A taxable year are properly classified under §168(e).

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 Industry Director, LB&I.

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