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Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

Refer Reply To:
CC:ITA:B07
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Date:
June 21, 2012

Re: Request for Extension of Time to Make Elections to Use the Alternative Depreciation System

Taxpayer =

General Partner =

Date 1 =
Date 2 =
Date 3 =
A =

B =

Dear :

This letter responds to a letter dated January 3, 2012, submitted on behalf of Taxpayer by its General Partner requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make an election under § 168(g)(7) of the Internal Revenue Code to use the alternative depreciation system (ADS) for all tangible depreciable property placed in service by Taxpayer in the taxable years ended Date 2 and Date 3.

FACTS

General Partner represents that the facts are as follows:

Taxpayer is a limited partnership that owns and operates an affordable housing community. Taxpayer uses a calendar year-end and the accrual method of accounting.

General Partner relied on qualified tax professionals to prepare Taxpayer's Federal income tax return for the taxable years ended Date 1, Date 2, and Date 3. On its timely filed return for the taxable year ended Date 1, General Partner made the election under § 168(g)(7) to use the ADS for all tangible depreciable property placed in service by Taxpayer. On its timely filed return for the taxable years ended Date 2 and Date 3, General Partner did not make the election under § 168(g)(7) to use the ADS for all tangible depreciable property placed in service by Taxpayer in those two years. Accordingly, Taxpayer determined its depreciation deduction for the taxable years ended Date 2 and Date 3 by using the general depreciation system (GDS) under § 168(a) instead of the ADS. Under its partnership agreement, Taxpayer is obligated to make the election prescribed under § 168(g)(7), unless special consent is received by one of its limited partners. For the taxable years ended Date 2 and Date 3, no consent was requested or received from its limited partner.

For Taxpayer's Federal income tax return for the taxable year ended Date 2, A, a qualified tax preparer, prepared and reviewed Taxpayer's return. For the taxable year ended Date 3, B, a new qualified preparer, raised questions regarding the depreciation changes and requirements under the partnership agreement. The issue was not resolved prior to the contractual due date to file the Taxpayer's Form 1065, and issue the associated Schedule K-1 to its limited partners for the taxable year ended Date 3. Thus, B relied on A's prior year determination that Taxpayer's should depreciate its assets under GDS and not the required ADS when B prepared the Date 3 return.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the election under § 168(g)(7) to use the ADS for all tangible depreciable property placed in service by Taxpayer in the taxable years ended Date 2 and Date 3.

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 alternative depreciation system in § 168(g). Under either depreciation system, the depreciation

deduction is computed by using a prescribed depreciation method, recovery period, and convention.

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. An election to use ADS is irrevocable.

Section 301.9100-7(T)(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 under § 168(g)(7) to use the ADS for determining depreciation for all tangible depreciable property placed in service by Taxpayer during the taxable years ended Date 2 and Date 3. These elections must be made by General Partner filing an amended Federal income tax return for the taxable years ended Date 2 and Date 3, with a statement indicating that Taxpayer is electing to use the ADS for all tangible depreciable property placed in service by Taxpayer during the taxable years ended Date 2 and Date 3. General Partner also must file amended Federal income tax returns

for any affected succeeding taxable years. In addition, the copy of this letter must be attached to such amended return. A copy is enclosed for that purpose.

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 any item of depreciable property placed in service by Taxpayer in the taxable years ended Date 2 and Date 3 are required to use the ADS pursuant to § 168(g)(1)(A) through (D).

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

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,

PATRICK CLINTON

PATRICK CLINTON
Assistant to Branch Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax and Accounting)

Enclosure (1):
copy for section 6110 purposes
copy of this letter