

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B07
PLR-107628-17
Date:
August 29, 2017

Re: Request for Extension of Time to Make the Partial Disposition Election

Legend

H =

W =

Date 1 =

Date 2 =

Date 3 =

A =

B =

C =

D =

E =

F =

G =

Dear _____ :

This letter responds to a letter dated February 21, 2017 submitted by both of you, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the partial disposition election under § 1.168(i)-8(d)(2) of the Income Tax Regulations for the taxable year ended on Date 1 (the A taxable year).

FACTS

H and W (hereinafter collectively referred to as “Taxpayer”) represent that the facts are as follows:

Taxpayer owns B residential and commercial rental units. W is responsible for managing the residential and commercial rental units and maintaining the bookkeeping for such units. Taxpayer failed to timely file its federal income tax return for the A taxable year. The period of limitation on assessment under § 6501(a) of the Internal Revenue Code for the A taxable year has not expired as of the date of this letter.

Taxpayer placed into service a commercial rental building, including its roof, on Date 2. Taxpayer replaced such roof during the A taxable year. The disposed roof is MACRS property for depreciation purposes (nonresidential real property). The disposed roof had an unadjusted depreciable basis of C, and an adjusted depreciable basis of D at the time of disposition. The new roof was placed into service on Date 3, which is during the A taxable year, with an unadjusted depreciable basis of E. Taxpayer capitalized the unadjusted depreciable basis of such new roof under § 1.263(a)-3(k) and also, on its federal income tax return for the A taxable year, claimed depreciation for such new roof under § 168 as a separate asset.

Taxpayer hired a professional to prepare their federal income tax return for the A taxable year, which was due in F. Taxpayer always files for an automatic extension to file their federal income tax return. An automatic extension was filed for Taxpayer’s A federal income tax return. Under normal circumstances Taxpayer provides their accountant with the records necessary to complete their federal income tax return by G. However, due to Taxpayer caring for H’s mother about 90 hours a week during E, Taxpayer provided their records to their accountant much later than usual which prevented the timely filing of their A federal income tax return.

Taxpayer made timely estimated quarterly tax payments for the A taxable year. Taxpayer utilized a professional and properly estimated their federal tax liability under the assumption that they would take a partial disposition deduction for the disposed roof that was placed into service on Date 2, as they included a deduction of D in their estimated quarterly tax payments calculation. However, Taxpayer was unaware that the partial disposition election had to be made on a timely filed federal tax return.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 to make a partial disposition election under § 1.168(i)-8(d)(2) on their A federal income tax return for the disposed roof that was placed into service on Date 2, and disposed of during the A taxable year.

LAW AND ANALYSIS

Pursuant to § 1.168(i)-8(a), § 1.168(i)-8 provides rules applicable to dispositions of MACRS property (as defined in § 1.168(b)-1(a)(2)) and also applies to dispositions described in § 1.168(i)-8(d)(1) of a portion of such property. Except as provided in § 1.168(i)-1(e)(3), § 1.168(i)-8 does not apply to dispositions of assets included in a general asset account.

Section 1.168(i)-8(b)(2) provides that, for purposes of § 1.168(i)-8, disposition occurs when ownership of the asset is transferred or when the asset is permanently withdrawn from use either in the taxpayer's trade or business or in the production of income. A disposition includes the sale, exchange, retirement, physical abandonment, or destruction of an asset. A disposition also occurs when an asset is transferred to a supplies, scrap, or similar account, or when a portion of an asset is disposed of as described in § 1.168(i)-8(d)(1). If a structural component, or a portion thereof, of a building is disposed of in a disposition described in § 1.168(i)-8(d)(1), a disposition also includes the disposition of such structural component or such portion thereof.

Section 1.168(i)-8(c)(1) provides that the manner of disposition (for example, normal retirement, abnormal retirement, ordinary retirement, or extraordinary retirement) is not taken into account in determining whether a disposition occurs or gain or loss is recognized.

Section 1.168(i)-8(c)(4)(i) provides that for purposes of applying § 1.168(i)-8, the facts and circumstances of each disposition are considered in determining what is the appropriate asset disposed of. The asset for disposition purposes may not consist of items placed in service by the taxpayer on different dates, without taking into account the applicable convention. For purposes of determining what is the appropriate asset disposed of, the unit of property determination under § 1.263(a)-3(e) or in published guidance in the Internal Revenue Bulletin under § 263(a) does not apply.

In addition to the general rules in § 1.168(i)-8(c)(4)(i) for purposes of applying § 1.168(i)-8, § 1.168(i)-4(c)(4)(ii)(A) provides that each building, including its structural components, is the asset except as provided in § 1.1250-1(a)(2)(ii) or in § 1.168(i)-8(c)(4)(ii)(B) or (D).

Section 1.168(i)-8(d)(1)(i) provides that for purposes of applying § 1.168(i)-8, a disposition includes a disposition of a portion of an asset as a result of a casualty event described in § 165, a disposition of a portion of an asset for which gain, determined without regard to § 1245 or § 1250, is not recognized in whole or in part under § 1031 or § 1033, a transfer of a portion of an asset in a transaction described in § 168(i)(7)(B), or a sale of a portion of an asset, even if the taxpayer does not make the election under paragraph § 1.168(i)-8(d)(2)(i) for that disposed portion. For other transactions, a disposition includes a disposition of a portion of an asset only if the taxpayer makes the election under § 1.168(i)-8(d)(2)(i) for that disposed portion.

Section 1.168(i)-8(d)(2)(i) provides that a taxpayer may make an election to apply § 1.168(i)-8 to a disposition of a portion of an asset. If the asset is properly included in one of the asset classes 00.11 through 00.4 of Rev. Proc. 87-56, 1987-2 C.B. 674, a taxpayer may make an election to apply § 1.168(i)-8 to a disposition of a portion of such asset only if the taxpayer classifies the replacement portion of the asset under the same asset class as the disposed portion of the asset.

Section 1.168(i)-8(d)(2)(ii)(A) provides that except as provided in § 1.168(i)-8(d)(2)(iii) or (iv), a taxpayer must make the election specified in § 1.168(i)-8(d)(2)(i) by the due date, including extensions, of the original federal tax return for the taxable year in which the portion of an asset is disposed of by the taxpayer.

Section 1.168(i)-8(d)(2)(ii)(B) provides that except as provided in § 1.168(i)-8(d)(2)(iii) or (iv), a taxpayer must make the election specified in § 1.168(i)-8(d)(2)(i) by applying the provisions of § 1.168(i)-8 for the taxable year in which the portion of an asset is disposed of by the taxpayer, by reporting the gain, loss, or other deduction on the taxpayer's timely filed, including extensions, original federal tax return for that taxable year, and, if the asset is properly included in one of the asset classes 00.11 through 00.4 of Rev. Proc. 87-56, by classifying the replacement portion of such asset under the same asset class as the disposed portion of the asset in the taxable year in which the replacement portion is placed in service by the taxpayer. Except as provided in § 1.168(i)-8(d)(2)(iii) or (iv)(B) or except as otherwise expressly provided by other guidance published in the Internal Revenue Bulletin, the election specified in § 1.168(i)-8(d)(2)(i) may not be made through the filing of an application for change in accounting method.

Section 1.168(i)-8(e) provides that, solely for purposes of § 1.168(i)-8(e), the term "asset" is an asset within the scope of § 1.168(i)-8 or the portion of such asset that is disposed of in a disposition described in § 1.168(i)-8(d)(1) (disposition of a portion of an asset). Except as provided by § 280B and § 1.280B-1, the following rules apply when an asset is disposed of during a taxable year:

(1) If an asset is disposed of by sale, exchange, or involuntary conversion, gain or loss must be recognized under the applicable provisions of the Internal Revenue Code.

(2) If an asset is disposed of by physical abandonment, loss must be recognized in the amount of the adjusted depreciable basis (as defined in § 1.168(b)-1(a)(4)) of the asset at the time of the abandonment, taking into account the applicable convention. However, if the abandoned asset is subject to nonrecourse indebtedness, § 1.168(i)-8(e)(1) applies to the asset instead of § 1.168(i)-8(e)(2). For a loss from physical abandonment to qualify for recognition under § 1.168(i)-8(e)(2), the taxpayer must intend to discard the asset irrevocably so that the taxpayer will neither use the asset again nor retrieve it for sale, exchange, or other disposition.

(3) If an asset is disposed of other than by sale, exchange, involuntary conversion, physical abandonment, or conversion to personal use (as, for example, when the asset is transferred to a supplies or scrap account), gain is not recognized. Loss must be recognized in the amount of the excess of the adjusted depreciable basis of the asset at the time of the disposition, taking into account the applicable convention, over the asset's fair market value at the time of the disposition, taking into account the applicable convention.

Section 1.168(i)-8(f)(3) applies only when a taxpayer disposes of a portion of an asset and § 1.168(i)-8(d)(1) applies to that disposition. For computing gain or loss, the adjusted basis of the disposed portion of the asset is the adjusted depreciable basis of that disposed portion at the time of its disposition, as determined under the applicable convention for the asset.

Section 1.168(i)-8(g)(1) provides that, except as provided in § 1.168(i)-8(g)(2) (asset disposed of is in a multiple asset account) or (3) (disposition of a portion of an asset), a taxpayer must use the specific identification method of accounting to identify which asset is disposed of by the taxpayer. Under this method of accounting, the taxpayer can determine the particular taxable year in which the asset disposed of was placed in service by the taxpayer. Section 1.168(i)-8(g)(3) (disposition of a portion of an asset) applies only if it is impracticable from the taxpayer's records to determine the particular taxable year in which the asset that included the disposed portion was placed in service.

Section 1.168(i)-8(h)(1) provides that depreciation ends for an asset at the time of the asset's disposition, as determined under the applicable convention for the asset. See § 1.167(a)-10(b). If a taxpayer disposes of a portion of an asset and § 1.168(i)-8(d)(1) applies to that disposition, depreciation ends for that disposed portion of the asset at the time of the disposition of the disposed portion, as determined under the applicable convention for the asset.

Section 1.446-1(e)(2)(ii)(d)(3)(iii) provides that generally the making of a late depreciation or amortization election or the revocation of a timely valid depreciation or amortization election is not a change in method of accounting, except as otherwise expressly provided by the Internal Revenue Code, the regulations under the Internal Revenue Code, or other guidance published in the Internal Revenue Bulletin. A taxpayer may request consent to make a late election or revoke a timely valid election by submitting a request for a private letter ruling.

Under § 301.9100-1, the Commissioner of Internal Revenue 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.

CONCLUSION

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 partial disposition election under § 1.168(i)-8(d)(2) for the disposed roof that was placed into service on Date 2, and disposed of during the A taxable year. This election must be made by Taxpayer filing an amended federal income tax return for the A taxable year, and reporting the gain, loss, or other deduction from the disposition of such roof on that amended return. Please attach a copy of this letter ruling to the amended return.

This letter ruling does not grant any extension of time for filing Taxpayer's federal income tax return for the taxable year ending on Date 1.

Except as expressly set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code (including other subsections of § 168) or regulations. Specifically, no opinion is expressed or implied concerning whether: (1) the disposition of the roof that was placed into service on Date 2, and disposed of during the A taxable year is eligible for the partial disposition election; (2) Taxpayer's depreciation method, recovery period, and convention for any asset are correct; and (3) whether the adjusted depreciable

basis of the property for which Taxpayer is making the partial disposition election is correct.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer 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 Taxpayer, who requested 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 a copy of this letter ruling to Taxpayer's authorized representative. We also are 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 & Accounting)

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