Internal Revenue Service

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Washington, DC 20224

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Person To Contact:
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Refer Reply To:
CC:ITA:7
PLR-102556-18

Date:
July 3, 2018

Re: Request to Revoke Taxpayer's Election Not to Deduct the Additional First Year Depreciation

Legend

Taxpayer	=	
GP	=	
LP1	=	
LP2	=	
Year1	=	
Year2	=	
Date1	=	
Date2	=	
Final Return Period	=	
Initial Return Period	=	
M%	=	
N%	=	

Dear :

This letter ruling responds to a letter dated December 21, 2017, submitted by Taxpayer requesting the consent of the Commissioner of Internal Revenue to revoke Taxpayer's election under § 168(k) of the Internal Revenue Code not to deduct the

additional first year depreciation that was made on its federal tax return for the short taxable year beginning Date1, and ended Date2 (the "Year1 taxable year").

Except as specifically stated otherwise, all references in this letter ruling to § 168(k) or § 708(b)(1)(B) are treated as a reference to § 168(k) or § 708(b)(1)(B), respectively, as in effect prior to amendment by the Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (December 22, 2017).

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer, a limited partnership, files Form 1065, *U.S. Return of Partnership Income*, on a calendar year basis. Taxpayer's principal business activity is 531110. Taxpayer's overall method of accounting is an accrual method.

Taxpayer is owned by a general partner and two limited partners. The general partner is GP, which owns an M% interest in Taxpayer. The limited partners are LP1, which owns an M% interest in Taxpayer, and LP2 which owns an N% interest in Taxpayer.

During Year1, Taxpayer experienced a technical termination under § 708(b)(1)(B) as the result of a former limited partner transferring all of its interest to LP2. As a result of the technical termination, Taxpayer was required to file a final federal tax return covering the Final Return Period, and an initial federal tax return covering the Initial Return Period. The Initial Return Period and the Year1 taxable year are the same.

During Year1, Taxpayer also placed in service qualified property (as defined in § 168(k)(2)). On its timely filed Form 1065 for the Year1 taxable year, Taxpayer made an election under § 168(k)(7) not to deduct the additional first year depreciation deduction for the following eligible classes of property: property in the 5-year class, and property in the 15-year class.

GP was responsible for filing Taxpayer's federal tax returns for the Final Return Period and for the Year1 taxable year. GP made the election not to deduct the additional first year depreciation based on its awareness that Taxpayer had reported losses on its federal tax returns for the prior year and Year1, and based on its anticipation of more losses in Year2. However, GP did not understand that LP2, its new limited partner, needed and expected to pass-through the additional depreciation deductions to its investors for Year1. GP also did not understand that the election to not deduct the additional first year depreciation could not be revoked on an amended return. Had GP understood this, GP would have obtained a more final and complete understanding of the needs and tax positions of LP2's investors prior to filing Taxpayer's Form 1065 for the Year1 taxable year.

RULING REQUESTED

Taxpayer requests consent to revoke its election under § 168(k)(7) not to deduct the additional first year depreciation under § 168(k)(1) for the 5-year and 15-year eligible classes of qualified property that were placed in service by Taxpayer during the short taxable year beginning Date1, and ended Date2, and for the 5-year and 15-year eligible classes of qualified property that were placed in service by the terminated partnership during Year1 and contributed to Taxpayer in a transaction described in § 708(b)(1)(B) by the terminated partnership during Year1.

LAW

Section 168(k)(1) allowed, in the taxable year that qualified property is placed in service, a 50-percent additional first year depreciation deduction for qualified property placed in service by the taxpayer before January 1, 2020 (before January 1, 2021, for qualified property described in §§ 168(k)(2)(B) or 168(k)(2)(C)).

Section 4 of Rev. Proc. 2017-33, 2017-19 I.R.B. 1236, provides guidance under § 168(k) as amended by § 143(b) of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), enacted as Division Q of the Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, 129 Stat. 2242 (Dec. 18, 2015). Pursuant to section 4.01(3) of Rev. Proc. 2017-33, rules similar to the rules in § 1.168(k)-1of the Income Tax Regulations for "qualified property" or for "30-percent additional first year depreciation deduction" apply to § 168(k)(2) and (3). However, in applying § 1.168(k)-1(d)(1)(i), the computation of the allowable 50-percent additional first year depreciation deduction is made in accordance with the rules for 50-percent bonus depreciation property and, in applying § 1.168(k)-1(f)(5)(iii)(A), the rules for 50-percent additional first year depreciation deduction apply.

Section 1.168(k)-1(f)(1)(ii) provides that in the case of a technical termination of a partnership under § 708(b)(1)(B), the additional first year depreciation deduction is allowable for any qualified property placed in service by the terminated partnership during the taxable year of termination and contributed by the terminated partnership to the new partnership. The allowable additional first year depreciation deduction for the qualified property shall not be claimed by the terminated partnership but instead shall be claimed by the new partnership for the new partnership's taxable year in which the qualified property was contributed by the terminated partnership to the new partnership. However, if qualified property is both placed in service and contributed to a new partnership in a transaction described in § 708(b)(1)(B) by the terminated partnership during the taxable year of termination, and if such property is disposed of by the new partnership in the same taxable year the new partnership received such property from the terminated partnership, then no additional first year depreciation deduction is allowable to either partnership.

Section 168(k)(7) provides that a taxpayer may elect not to deduct the additional first year depreciation for any class of property placed in service during the taxable year.

Section 4.04(1) of Rev. Proc. 2017-33 provides that the rules for making the election under § 168(k)(7) not to deduct the additional first year depreciation (the § 168(k)(7) election) are similar to the rules for making such election under § 168(k)(2)(D)(iii) as in effect before the enactment of the PATH Act. As a result, the § 168(k)(7) election applies to all qualified property that is in the same class of property and placed in service in the same taxable year. If the § 168(k)(7) election is made for a class of property that is qualified property placed in service during the taxable year, no additional first year depreciation deduction is allowable for that property and § 168(k)(2)(F) does not apply to that property.

Section 4.04(2) of Rev. Proc. 2017-33 provides that, in general, rules similar to the rules in § 1.168(k)-1(e)(2), (3), (5), and (7) apply for purposes of § 168(k)(7).

Section 1.168(k)-1(e)(2) defines the term “class of property” as meaning, among other things, each class of property described in § 168(e) (for example, 5-year property).

Section 1.168(k)-1(e)(3)(i) provides that the election not to deduct additional first year depreciation must be made by the due date (including extensions) of the federal tax return for the taxable year in which the property is placed in service by the taxpayer.

Section 1.168(k)-1(e)(7)(i) provides that an election not to deduct the additional first year depreciation for a class of property that is qualified property, once made, may be revoked only with the written consent of the Commissioner of Internal Revenue. To seek the Commissioner's consent, the taxpayer must submit a request for a letter ruling.

CONCLUSION

Based solely on the facts and representations submitted, we conclude that a revocation of Taxpayer’s election not to deduct any additional first year depreciation under § 168(k)(1) for the 5-year and 15-year eligible classes of qualified property that were placed in service by Taxpayer during the short taxable year beginning Date1, and ended Date2, and for the 5-year and 15-year eligible classes of qualified property that were placed in service by the terminated partnership during Year1 and contributed to Taxpayer in a transaction described in § 708(b)(1)(B) by the terminated partnership during Year1, is permitted under § 1.168(k)-1(e)(7)(i). Accordingly, Taxpayer is granted 60 calendar days from the date of this letter to revoke such election. The revocation must be made in a written statement filed with Taxpayer’s amended federal tax return for the taxable year beginning Date1, and ended Date2.

A copy of this letter ruling must be attached to such amended return. A copy is enclosed for that purpose. Alternatively, a taxpayer filing its federal income tax return

electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of the letter ruling.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provisions of the Code (including other subsections of § 168). Specifically, no opinion is expressed or implied on (1) whether any item of depreciable property that was placed in service by Taxpayer during the short taxable year beginning Date1, and ended Date2, or that was placed in service by the terminated partnership during Year1 and contributed to Taxpayer in a transaction described in § 708(b)(1)(B) by the terminated partnership during Year1, is eligible for the additional first year depreciation deduction under § 168(k), or (2) whether Taxpayer's classification of any item of depreciable property under § 168(e) or Rev. Proc. 87-56, 1987-2 C.B. 674, is correct.

The ruling contained in this letter is 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 the taxpayer requesting it. Section 6110(k)(3) provides that this ruling may not be used or cited as precedent.

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

Sincerely,

Kathleen Reed

KATHLEEN REED
Branch Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax and Accounting)

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

cc: