Internal Revenue Service

Number: **201844006**
Release Date: 11/2/2018

Index Number: 168.36-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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Refer Reply To:
CC:ITA:7
PLR-106827-18

Date:
August 1, 2018

Re: Request to revoke the election not to deduct the additional first year depreciation

Legend

Taxpayer =

Preparer =
A =

B =

C =
D =
Year1 =
Year2 =
Date1 =

Dear :

This letter ruling responds to a letter dated February 28, 2018, 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 for certain qualified property, that was made on its federal tax return for the taxable year ended Date1 (the “Year1 taxable year”).

Except as specifically stated otherwise, all references in this letter ruling to § 168(k) are treated as a reference to § 168(k) as in effect before the date of the

enactment of the Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 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 is subject to the TEFRA unified audit and litigation provisions. Taxpayer's overall method of accounting is an accrual method. Taxpayer is principally engaged in A.

Taxpayer's sole general partner is B, a real estate investment trust ("REIT") (as defined under § 856). B owns approximately C percent of the economic interests and D percent of the non-economic interests of Taxpayer, and is the Tax Matters Partner of Taxpayer.

During Year1, Taxpayer placed in service qualified property (as defined in § 168(k)(2)). On its timely filed Form 1065 for the Year1 taxable year, Taxpayer made the election under § 168(k)(7) not to claim the 50-percent additional first year depreciation deduction for all classes of property, including 7-year property, 10-year property, and qualified improvement property.

Taxpayer made this election based on erroneous advice provided by Preparer that the undepreciated basis of a building that was demolished during the Year1 taxable year is deductible. Preparer prepared Taxpayer's Year1 Form 1065 and it included such deduction. Because B's share of Taxpayer's Year1 taxable income was reasonably in line with its expected distributions to shareholders, claiming the additional first year depreciation deduction under § 168(k) for the Year1 taxable year would have reduced B's share of taxable income below its expected distributions, and would also have required Taxpayer to undertake complex recordkeeping and state tax modifications. B therefore decided to have Taxpayer make the election not to claim the additional first year depreciation deduction under § 168(k)(7) for the Year1 taxable year.

During Year2, Preparer assigned a new engagement team for its account with Taxpayer. During the review of Taxpayer's Year1 Form 1065 by the new engagement team, Preparer concluded that the federal income tax treatment of the undepreciated basis of the demolished building on Taxpayer's Year1 Form 1065 was in error. Preparer then informed Taxpayer that it could not deduct the undepreciated basis of the demolished building on Taxpayer's Year1 Form 1065 but must instead capitalize this amount to the basis of land in accordance with § 280B. Preparer also advised Taxpayer that B's Year1 share of Taxpayer's taxable income was greater than had been reported on Taxpayer's Year1 Form 1065. B would be liable for income tax on this

amount, and the magnitude of this adjustment would put B perilously close to failing the REIT requirement that it distribute out at least 90 percent of its REIT taxable income.

Had Taxpayer known the demolition costs were not deductible in Year1, Taxpayer would not have made the election under § 168(k)(7) not to deduct the additional first year depreciation for all classes of property and Preparer would not have advised Taxpayer to make such election based on the REIT taxable income distribution requirement.

Neither Taxpayer nor B nor any other partner in Taxpayer has made the election under § 168(k)(4).

RULING REQUESTED

Taxpayer requests consent to revoke its election under § 168(k)(7) not to deduct the additional first year depreciation for the 7-year property, 10-year property, and qualified improvement property eligible classes of qualified property that were placed in service by Taxpayer during the taxable year ended Date1.

LAW AND ANALYSIS

Section 168(k)(1) provided a 50-percent additional first year depreciation deduction for the placed-in-service year for qualified property placed in service before January 1, 2020 (before January 1, 2021, for qualified property described in § 168(k)(2)(B) or (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 168(k)(7) provides that a taxpayer may make an election not to deduct the additional first year depreciation for any class of property placed in service during the taxable year and an election under § 168(k)(7) may be revoked only with the consent of the Secretary.

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). As a result of the amendments to § 168(k) by § 143(b) of the PATH Act, the term “class of property” also includes qualified improvement property as defined in § 168(k)(3) and depreciated under § 168.

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 7-year property, 10-year property, and qualified improvement property eligible classes of qualified property that were placed in service by Taxpayer in the taxable year ended Date1, 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 that is filed with Taxpayer’s amended Form 1065 for the taxable year ended Date1.

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 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 ruled upon above, no opinion is expressed or implied concerning the 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 placed in service by Taxpayer in the taxable year ended Date1, is eligible for the 50-percent additional first year depreciation deduction under § 168(k), (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, or (3) whether Taxpayer's qualified improvement property meets the requirements of § 168(k)(3) and section 4.02 of Rev. Proc. 2017-33.

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

This letter 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)