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PLR-125439-18

Date:
February 15, 2019

Re: Request for an extension of time to make the election under § 168(k)(7) not to deduct the additional first year depreciation

Legend

Taxpayer	=	
A	=	
B	=	
C	=	
D	=	
E	=	
F	=	
G	=	
H	=	
Year1	=	
Date1	=	
Date2	=	
Date3	=	
Date4	=	
Date5	=	

Dear :

This letter ruling responds to a letter dated July 17, 2018, and supplemental correspondence, submitted by Taxpayer, requesting an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to

make the election under § 168(k)(7) of the Internal Revenue Code not to deduct the additional first year depreciation for all classes of qualified property placed in service during Year1.

All references in this letter ruling to § 168(k) are treated as a reference to § 168(k) as in effect after amendment by § 143(b) of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), enacted as part of the Consolidated Appropriations Act, 2016, Division Q, Pub. L. 114-113, 129 Stat. 2242 (December 18, 2015). Further, all references in this letter ruling to § 168(k) or § 708(b) are treated as a reference to § 168(k) or § 708(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 liability company that is treated as a partnership for federal income tax purposes, files Form 1065, *U.S. Return of Partnership Income*, on a calendar year basis. Taxpayer's overall method of accounting is an accrual method. Taxpayer is principally engaged in A located in B.

During Year1, Taxpayer was owned by two corporate members and therefore was treated as a partnership for federal income tax purposes. Up until Date1, Taxpayer owned 100 percent of C, a limited liability company that was disregarded as an entity separate from Taxpayer. After Date1, C was treated as a partnership for federal income tax purposes due to its receipt of cash contributions from two new members on Date2. C owned, and continues to own, 100 percent of D. D owns and operates a E that is located in B. D also originally developed the E, which consists of F assets. D is disregarded as an entity separate from its owner, which up until Date1, was Taxpayer, and after Date1, was C.

Based on the structure described above, up until Date1, Taxpayer was treated for federal income tax purposes as owning the E assets. Due to C having received cash contributions from new members on Date2, Taxpayer was treated, pursuant to Rev. Rul. 99-5, 1999-1 C.B. 434 (Situation 2) as contributing all of the assets of C to a partnership (C) in exchange for a partnership interest. The new members received Class A interests in C in exchange for their cash contributions and Taxpayer received Class B interests in exchange for its contribution of property. Therefore, on and after Date2, Taxpayer's only asset for federal income tax purposes was an investment in a partnership. On Date3 (the last day of Year1), one of Taxpayer's two partners purchased the entire interest held by the other partner. Therefore, pursuant to Rev. Rul. 99-6, 1999-1 C.B. 432 (Situation 1), Taxpayer terminated as a partnership under § 708(b)(1)(A), resulting in a short final taxable year ended Date3 (Year1).

During Year1, the E was under development, and various G assets were placed in service on different dates.

Taxpayer expected that all of the G assets would be placed in service on or after Date2, when C became a partnership for federal income tax purposes. The LLC agreement for C required that (i) C make the election not to claim the additional first year depreciation on the E assets and (ii) the additional first year depreciation shall not be claimed on any of the E assets. The reason for the decision not to claim the additional first year depreciation was because such depreciation would have resulted in the Class A partners in C having a negative capital account sooner than desired and thus having to agree to a larger deficit restoration obligation. Given this intent, to the extent any G assets were unexpectedly placed in service prior to Date2, then Taxpayer would have needed to elect not to claim the additional first year depreciation on its final partnership federal tax return for the tax year ended Date3.

H was engaged to prepare the final partnership return for Taxpayer for Year1. This return was timely filed on the Date4, the extended due date for this return. Up until shortly before Date4, H understood that all of the G assets were placed in service on or after Date2. Accordingly, the final draft return that had been prepared for Taxpayer did not reflect any regular or additional first year depreciation, since it was believed that no G assets were placed in service before Date2, when Taxpayer was treated as the owner of the E for federal income tax purposes.

On Date5, which was shortly before Date4, H was informed that some G assets where actually placed in service prior to Date2. However, there was no time before the deadline to file Taxpayer's final partnership federal tax return for the short taxable year ended Date3, to obtain the additional information needed to properly make the adjustments to such return before filing. Therefore, Taxpayer's final partnership return for Year1 was filed on Date4, reflecting no regular or additional first year depreciation, with the intention to file an amended return to reflect the proper depreciation deductions, including regular, but not additional first year depreciation. Unfortunately, H inadvertently failed to attach the election statement required by § 1.168(k)-1(e)(3) of the Income Tax Regulations and as prescribed on Form 4562, "Depreciation and Amortization," to Taxpayer's final partnership return for Year1.

Subsequently, H realized that it had inadvertently failed to attach the election statement required by § 1.168(k)-1(e)(3) to Taxpayer's final partnership return for Year1. After learning of this omission, Taxpayer requested H to assist in preparing a request for this ruling request.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 to make the election under § 168(k)(7) not to deduct the additional first year depreciation for all classes of qualified property placed in service during Year1.

LAW AND ANALYSIS

Section 168(k)(1) allows, 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 (or January 1, 2021, for qualified property described in §§ 168(k)(2)(B) or 168(k)(2)(C)).

Section 168(k)(7) allows a taxpayer to elect not to deduct the additional first year depreciation for any class of property placed in service by the taxpayer during the taxable year. The term "class of property" is defined in § 1.168(k)-1(e)(2). *See* section 5.01 of Rev. Proc. 2008-54, 2008-2 C.B. 722 (rules similar to the rules in § 1.168(k)-1 for "qualified property" or for "30-percent additional first year depreciation deduction" apply for purposes of § 168(k) as currently in effect).

Section 1.168(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)(3)(ii) provides that the election not to deduct additional first year depreciation must be made in the manner prescribed on Form 4562 and its instructions. The instructions to Form 4562 for Year1 provided that the election not to deduct the additional first year depreciation is made by attaching a statement to the taxpayer's timely filed tax return for indicating that the taxpayer is electing not to deduct the additional first year depreciation and the class of property for which the taxpayer is making the election.

Section 4.04 of Rev. Proc. 2017-33, 2017-19 I.R.B. 1236, 1240, provides guidance regarding the election under § 168(k)(7) not to deduct the additional first year depreciation (the § 168(k)(7) election). Section 4.04(1) of Rev. Proc. 2017-33 provides that the rules for making the § 168(k)(7) election are similar to the rules for making the 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. Section 4.04(2) of Rev. Proc. 2017-33 provides that generally rules similar to the rules in § 1.168(k)-1(e)(2), (3), (5), and (7) apply for purposes of § 168(k)(7).

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 ruling to make the election under § 168(k)(7) not to deduct the additional first year depreciation for all qualified property placed in service during Year1, that qualify for the additional first year depreciation deduction. This election must be made by Taxpayer filing an amended partnership return for Year1, with a statement indicating that Taxpayer is electing not to deduct the additional first year depreciation for all classes of property placed in service by Taxpayer in Year1.

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 (including other subsections of § 168). Specifically, no opinion is expressed or implied on whether any item of depreciable property placed in service by Taxpayer during Year1 is eligible for the additional first year depreciation deduction.

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 the appropriate parties. 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 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 representatives. We also are sending a copy of this letter ruling to the appropriate operating division director.

Sincerely,

Deena M. Devereux

DEENA M. DEVEREUX
Senior Technician Reviewer, Branch 7
Office of Associate Chief Counsel
(Income Tax and Accounting)

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