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Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B07
PLR-119360-23
Date: March 5, 2024

Re: Request for Extension of Time to Make the Election Not to Deduct Additional First Year Depreciation

Legend

Taxpayer	=	

Dear :

This letter refers to a letter dated September 19, 2023, and supplemental information, submitted on behalf of Taxpayer by Taxpayer's authorized representative, 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 additional first year depreciation under § 168(k) for certain property placed in service by Taxpayer during the Taxable Year. This letter ruling is being issued electronically, as permissible under section 7.02(5) of Rev. Proc. 2023-1, 2023-1 I.R.B. 1, 35.

Unless provided otherwise, all references in this letter ruling to § 168(k) are treated as a reference to § 168(k) as in effect after amendment by the Tax Cuts and Jobs Act, Pub. L. 115-97, 131 Stat. 2054 (December 22, 2017). Further, all references to § 1.168(k)-2 of the Income Tax Regulations are treated as a reference to the final regulations under § 1.168(k)-2 published in the Federal Register on November 10, 2020 (85 FR 71734).

FACTS

Taxpayer, a limited liability company, is treated as Real Estate Investment Trust (REIT) for Federal income tax purposes and files a Form 1120-REIT, *U.S. Income Tax Return for Real Estate Investment Trusts*, on a calendar year basis (Form 1120). Taxpayer's overall method of accounting is the accrual method. Taxpayer's Form 1120 for the Taxable Year was filed by the due date, Date1.

Taxpayer engaged Firm to prepare and file its Form 1120 for the Taxable Year. Taxpayer intended to make the election under § 168(k)(7) not to claim the additional first year depreciation on the return for its 3-year, 5-year, 9-year, 10-year, and 20-year year classes of qualified property (the qualified property) that Taxpayer placed in service during the Taxable Year. Taxpayer communicated its desire to make the § 168(k)(7) election to Firm prior to Date 1. Taxpayer relied on Firm for advice to comply with the procedural requirements to make the § 168(k)(7) election for the Taxable Year and understood that Firm would take the appropriate steps to make the election.

Firm prepared Taxpayer's Form 1120 and attached a Form 4562, *Depreciation and Amortization*, for the Taxable Year. Taxpayer did not deduct any depreciation for the qualified property that Taxpayer placed in service during Taxable Year on the Form 4562. Firm timely filed Taxpayer's Form 1120 electronically with the attached the Form 4562 on or before Date1. However, the required § 168(k)(7) election statement was inadvertently omitted from the filing.

In Date2, while preparing Taxpayer's Form 1120 for Year2, Firm discovered that the election statement was inadvertently omitted from the Taxpayer's Form 1120 for the Taxable Year. Firm informed Taxpayer immediately of the failure to file the election statement required to make the § 168(k)(7) election for the qualified property on the Form 1120 for the Taxable Year.

RULING REQUESTED

Accordingly, Taxpayer requests 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) not to deduct the additional first year depreciation under § 168(k) for the qualified property that Taxpayer placed in service during the Taxable Year.

LAW AND ANALYSIS

Section 168(k)(1) allows, for the taxable year in which qualified property is placed in service, an additional first year depreciation deduction equal to the applicable percentage of the adjusted basis of that qualified property.

For qualified property acquired by a taxpayer after September 27, 2017, §§ 168(k)(6)(A)(i) and (B)(i) provide that the applicable percentage is 100 percent for qualified property placed in service by the taxpayer after September 27, 2017, and before January 1, 2023 (before January 1, 2024, for qualified property described in § 168(k)(2)(B) and (C)).

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 1.168(k)-2(f)(1)(i) provides that if this election is made, the election applies to all qualified property that is in the same class of property and placed in service in the same taxable year, and no additional first year depreciation deduction is allowable for the property placed in service during the taxable year in the class of property, except as provided in § 1.743-1(j)(4)(i)(B)(1). The term "class of property" is defined in § 1.168(k)-2(f)(1)(ii) as meaning, among other things, each class of property described in § 168(e) (for example, 5-year property).

Section 1.168(k)-2(f)(1)(iii)(A) 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 qualified property is placed in service by the taxpayer.

Section 1.168(k)-2(f)(1)(iii)(B) provides that the election not to deduct additional first year depreciation must be made in the manner prescribed on Form 4562, Depreciation and Amortization, and its instructions. The instructions to Form 4562 for the taxable year provide 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 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.

Under § 301.9100-1(a), 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 a regulatory election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides rules for requesting extensions of time for making regulatory 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 an extension of 60 calendar days from the date of this letter ruling to make the election not to deduct the additional first year depreciation under § 168(k) for the qualified property that Taxpayer placed in service during the Taxable Year.

A copy of this letter should be attached to the federal income tax return to which it is relevant. A taxpayer filing its federal return electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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 the Taxable Year, is eligible for the additional first year depreciation deduction under § 168(k).

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

Sincerely,

Elizabeth R. Binder

ELIZABETH R. BINDER
Senior Counsel, Branch 7
Office of Associate Chief Counsel
(Income Tax & Accounting)

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

cc: