Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:ITA:B07
PLR-102312-24

Date:
May 06, 2024

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

Legend

Taxpayer	=	
Taxable Year	=	
Date1	=	
Date2	=	
Firm	=	
State	=	
Year1	=	

Dear :

This letter refers to a letter dated January 16, 2024, 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 not to deduct the additional first year depreciation under § 168(k)(7) of the Internal Revenue Code for all classes of qualified property placed in service by Taxpayer during the Taxable Year. This letter ruling is being issued electronically, as permissible under sections 7.02(2) and 7.02(5) of Rev. Proc. 2024-1, 2024-1 I.R.B. 1, 32, 34.

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 represents the following:

Taxpayer, a limited liability company, is treated as a partnership for Federal income tax purposes and files a Form 1065, *U.S. Return of Partnership Income*, on a calendar year basis. Taxpayer's overall method of accounting is the cash receipts and disbursements method. The due date of Taxpayer's Form 1065 for Taxable Year was Date1.

During the Taxable Year, Taxpayer placed in service assets that are classified as land improvement, building improvement, and machinery and equipment. Such assets are qualified property under § 168(k)(2) of the Code. Taxpayer engaged Firm to prepare and file its Form 1065 and State income tax returns for the Taxable Year. Taxpayer timely filed a request for a six-month extension to file its Form 1065. Taxpayer timely filed its Form 1065 for Taxable Year on Date2. On its timely filed Form 1065 for the Taxable Year, Taxpayer deducted the additional first year depreciation for the classes of property of the assets placed in service during Taxable Year. Firm did not recommend to Taxpayer to not deduct the additional first year depreciation for the qualified property placed in service during Taxable Year. Taxpayer relied on Firm to advise it regarding the election to deduct additional first year depreciation, and Firm was aware of all relevant facts regarding that issue at the time Firm was advising Taxpayer regarding its Form 1065 for the Taxable Year.

State does not allow for the claiming of additional first year depreciation, and requires that any additional first year depreciation be added back to adjusted gross income for State income tax purposes. When Firm prepared and filed Taxpayer's State income tax return, Firm inadvertently did not report this required modification on its State income tax return.

In Year1, after Taxpayer filed its Form 1065 and its State income tax return for Taxable Year, an accountant at Firm became aware that the modification to adjusted gross income required by State tax law was inadvertently not included on the tax return. Firm also became aware of the detrimental effect that the additional first year depreciation modification would have had on the State income tax returns of Taxpayer's partners.

RULING REQUESTED

Accordingly, Taxpayer requests a ruling providing the consent of the Commissioner to grant an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 to make the election not to deduct the additional first year depreciation under § 168(k) for all classes of qualified property placed in service by Taxpayer 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 Federal 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 (the Commissioner) 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 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make certain regulatory elections. Section 301.9100-1(b) defines a "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice or announcement published in the Internal Revenue Bulletin.

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 all classes of qualified property placed in service by Taxpayer during the Taxable Year. The election should be made in a written statement filed with the appropriate IRS Service Center either: (1) to be associated with Taxpayer's Form 1065, or (2) accompanying Form 8082, *Notice of Inconsistent Treatment of Administrative Adjustment Request* (AAR), and any related filings as instructed on Form 8082, as appropriate.

A copy of this letter should be attached to the relevant filing. 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,

AMY S. WEI
Senior Technician Reviewer, Branch 7
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure:
copy of this letter for section 6110 purposes

cc: