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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:ITA:B07
PLR-103718-24

Date:
August 16, 2024

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

Legend

Taxpayer	=
Date 1	=
Date 2	=
Date 3	=
Month	=
Year	=
Firm 1	=
Firm 2	=
Independent Auditor	=
X	=

Dear :

This letter responds to a letter dated February 23, 2024, and subsequent 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 not to deduct the additional first year depreciation under § 168(k) of the Internal Revenue Code for all qualified film or television productions placed in service by Taxpayer during the taxable years ending on Date1, Date2, and Date3 (Tax Years). This letter ruling is being issued electronically as permissible under section 7.02(5) of Rev. Proc. 2024-1, 2024-1 I.R.B. 1, 34.

All references in this letter ruling to § 168(k) are treated as a reference to § 168(k) as in effect after amendment by Public Law 115-97, 131 Stat. 2054 (Dec. 22, 2017), commonly referred to as the Tax Cuts and Jobs Act. Further, all references in this letter ruling to § 1.168(k)-2 of the Income Tax Regulations are treated as a reference to the final regulations under § 1.168(k)-2 that were published in the Federal Register (84 FR 50108) on September 24, 2019, or the final regulations under § 1.168(k)-2 that were published in the Federal Register on November 10, 2020 (85 FR 71734), as applicable for the year the property was placed in service.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer, a limited liability company that is classified as a partnership for Federal income tax purposes, files a 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 engaged in the business of X.

During the Tax Years, Taxpayer placed in service qualified film or television productions, as defined in § 181(d), that are qualified property, as defined in § 168(k)(2). Taxpayer intended to elect out, under § 168(k)(7), of the additional first year depreciation provided under § 168(k)(1) for all qualified film or television productions placed in service by Taxpayer during the Tax Years (the Election Property).

Taxpayer engaged Firm1 to assist with preparing and filing its Federal income tax returns for the Tax Years (the Election Returns). Taxpayer relied on Firm1 to properly prepare and file its Election Returns, including the election statements required pursuant to § 1.168(k)-2(f)(1)(iii) (Election Statements).

Taxpayer timely filed its Election Returns. On the Election Returns, the Election Property was depreciated using the income forecast method under § 167(g), and Taxpayer did not apply bonus depreciation to the Election Property. However, the Election Statements were inadvertently omitted when the Election Returns were filed. Because the Election Returns did not incorporate the Election Statements, the elections out of additional first year depreciation for the Election Property were not properly filed.

In Month, as part of the preparation process for the Federal income tax return for Year, Firm2 discovered that the required Election Statements were not included in the Election Returns. Firm2 immediately brought the missing Election Statements to Taxpayer's attention, and Firm2 recommended that Taxpayer seek relief under §§ 301.9100-1 and 301.9100-3 for an extension of time to properly file the Election Statements.

Although the period of limitations on assessment under § 6501(a) is closed for the taxable year ending on Date1, Taxpayer provided a statement from Independent

Auditor, as described in Treasury Regulation § 301.9100-3(c)(1)(ii), certifying that the interests of the government are not prejudiced (under the standards of § 301.9100-3(c)(1)(i)) by a grant of relief.

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 under § 168(k) for all qualified film or television productions placed in service by Taxpayer during the Tax Years.

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 separate production, as defined in § 1.181-3(b), of a qualified film or television production.

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 Tax Years 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.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner of Internal Revenue will use to determine whether to grant an extension of time to make a regulatory election. Under § 301.9100-1(a), 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. 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(b) defines a regulatory election as an election whose due date is prescribed by regulations published in the Federal Register, a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. The requested accounting method change is a regulatory election because the due date of the change is prescribed in § 1.168(k)-2(f)(1).

Taxpayer's request must be analyzed under the requirements of § 301.9100-3 because the automatic extensions provided in § 301.9100-2 are not applicable.

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.

Section 301.9100-3(c)(1)(ii) provides that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under § 301.9100-3. The Service may condition a grant of relief on the taxpayer providing the Service with a statement from an independent auditor (other than an auditor providing an affidavit pursuant to § 301.9100-3(e)(3)) certifying that the interests of the government are not prejudiced under the standards set forth in § 301.9100-3(c)(1)(i).

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 elections not to deduct the additional first year depreciation under § 168(k) for all qualified film or television productions placed in service by Taxpayer for the taxable years ending on Date1, Date2, and Date3.

For the taxable year ending on Date1 that is closed by the period of limitations on assessment under § 6501(a), this election must be made by Taxpayer filing a statement

indicating that Taxpayer is electing not to deduct the additional first year depreciation for all qualified film or television productions placed in service by Taxpayer during the taxable year ending on Date1, along with a copy of this letter ruling, with the IRS Service Center where Taxpayer filed its original Federal tax return for that year. For the taxable year ending on Date1, the adjusted basis of the subject property as of the beginning of the first open year must reflect the reduction in basis for the greater of the depreciation allowed or allowable in the closed year had the election been made timely by the taxpayer.

For the taxable years ending on Date2 and Date3, the elections must be made by Taxpayer filing amended Federal income tax returns for such taxable years, each with a statement attached indicating that Taxpayer is electing not to deduct the additional first year depreciation for all qualified film or television productions placed in service by Taxpayer during that taxable year.

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 placed in service by Taxpayer during the Tax Years is eligible for the additional first year depreciation deduction under § 168(k); or (2) whether Taxpayer's classification of any item of property under § 181(d) is correct.

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 rulings, it is subject to verification on examination.

A copy of this letter ruling must be attached to any Federal income tax return to which it is relevant. Alternatively, 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.

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 a copy of this letter ruling to Taxpayer's authorized representative. We are also sending a copy of this letter ruling to the appropriate operating division director.

Sincerely,

Amy S. Wei

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

Enclosures (2):

copy of this letter
copy for section 6110 purposes
cc: