Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:ITA:B07
PLR-113162-24

Date:
November 18, 2024

Legend

Taxpayer	=
Taxable Year	=
Accounting Firm	=
Law Firm	=
Date1	=
Date2	=
Date3	=
Date4	=
Date5	=
Date6	=
Date7	=
State	=
X	=

Dear

This letter refers to a letter dated Date1, and subsequent correspondence, dated Date5 and Date6, 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 (1) 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, and (2) make the election under § 163(j)(7)(B) to be treated as an

"electing real property trade or business" for 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 references 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 in this letter ruling to § 1.168(k)-2 of the Income Tax Regulations are treated as references 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 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 accrual method. The due date (including extensions) of Taxpayer's Form 1065 for the Taxable Year was Date7. Taxpayer is engaged in the X business. Specifically, Taxpayer owns and operates commercial real estate property in conjunction with its X business.

During the Taxable Year, Taxpayer placed in service assets that are classified as 5-year, 7-year, and 15-year property. Taxpayer represents that such assets are qualified property under § 168(k)(2). Taxpayer engaged Accounting Firm to prepare and file its Form 1065 and State income tax returns for the Taxable Year.

Taxpayer timely filed its Form 1065 for the Taxable Year on Date2. On its timely filed Form 1065 for the Taxable Year, Taxpayer deducted the additional first year depreciation as provided for under § 168(k) for the above-described classes of property of the assets placed in service during the Taxable Year. Additionally, Taxpayer reported excess business interest expense incurred during the Taxable Year that was disallowed under § 163(j) but did not make the election under § 163(j)(7)(B) to be treated as an "electing real property trade or business" because it claimed the additional first year depreciation for qualified improvement property for the Taxable Year. Also, Taxpayer represents that it is a real property trade or business as described in § 469(c)(7)(C).

Accounting Firm did not recommend to Taxpayer to file the election to not deduct the additional first year depreciation for the qualified property placed in service during the Taxable Year. Taxpayer relied on Accounting Firm to advise it regarding whether to deduct additional first year depreciation, and Accounting Firm was aware of all relevant facts regarding that issue at the time Accounting Firm was advising Taxpayer regarding its Form 1065 for the Taxable Year.

Taxpayer reviewed this federal income tax return prior to its filing but was not aware at that time of certain unfavorable State tax implications to one or more partners of Taxpayer stemming from Taxpayer's deduction of the additional first year depreciation on its federal income tax return for the Taxable Year. These implications were first discovered by Accounting Firm on Date3. Taxpayer was informed of these implications on Date4. Subsequently, Taxpayer consulted Law Firm and decided to file this request for a private letter ruling.

RULINGS REQUESTED

Taxpayer requests an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 to (1) make the election under § 168(k)(7) not to deduct the additional first year depreciation for all classes of qualified property placed in service by Taxpayer during the Taxable Year, and (2) make the election under § 163(j)(7)(B) to be treated as an "electing real property trade or business" for 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 classes of property for which the taxpayer is making the election.

Section 163(a) provides generally for an interest deduction for all interest paid or accrued within the taxable year of indebtedness.

Section 163(j) provides that the amount of business interest allowed as a deduction under § 163(j) shall not exceed the sum of (1) the business interest income of such taxpayer for such taxable year; (2) 30 percent of the adjusted taxable income of such taxpayer for such taxable year, plus; (3) the floor plan financing interest of such taxpayer for such taxable year.

Section 163(j)(5) defines “business interest” as any interest paid or accrued on indebtedness properly allocable to a trade or business.

Section 163(j)(7)(A)(ii) provides the term “trade or business” for purposes of § 163 shall not include any electing real property trade or business.

Section 163(j)(7)(B) defines an electing real property trade or business as “any trade or business which is described in § 469(c)(7)(C) and which makes an election under this subparagraph. Any election shall be made at such time and in such manner as the Secretary shall prescribe and, once made, shall be irrevocable.” Section 1.163(j)-9(d)(1) provides that an election is made by attaching an election statement to the taxpayer’s timely filed original federal income tax return, including extensions.

Section 469(c)(7)(C) defines “real property trade or business” as “any real property development, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business.”

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. The requested accounting method change is a regulatory election because the requirements and the due date of the change are, respectively, prescribed in § 1.168(k)-2(f)(1) and in § 1.163(j)-9(d).

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.

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 § 168(k)(7) 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. Additionally, Taxpayer is granted an extension of 60 calendar days from the date of this letter ruling to file, in accordance with the procedures set forth in § 1.163(j)-9(d), the election statement required by § 163(j)(7)(B), stating that Taxpayer is an "electing real property trade or business" for the Taxable Year. These elections must be made pursuant to a request for an administrative adjustment (see § 6227) in a written statement filed with the appropriate service center accompanying Form 1065-X, Amended Return or Administrative Adjustment Request (AAR), or Form 8082, Notice of Inconsistent Treatment or AAR, and for any related filings as instructed in Form 1065-X or 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). Additionally, no opinion is expressed or implied on whether Taxpayer qualifies as an electing real property trade or business that is qualified to make the election under § 163(j)(7)(B).

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, 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 IRS operating division official.

Sincerely,

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

cc: