Internal Revenue Service

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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-105573-23

Date: August 16, 2023

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

LEGEND:

Taxpayer =
X =
Taxable Year =
State =
Date1 =
Date2 =
Date3 =

Dear :

This letter ruling responds to a letter dated February 27, 2023, and subsequent correspondence, submitted by your representative on behalf of Taxpayer. In that letter, Taxpayer requests an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the § 168(k)(7) election not to deduct additional first year depreciation under § 168(k) of the Internal Revenue Code with respect to a specific partner's interest for the class of property described in § 1.168(k)-2(f)(1)(ii)(G) for the Taxable Year. This letter ruling is being issued electronically in accordance with Rev. Proc. 2020-29, 2020-21 I.R.B. 859. A paper copy will not be mailed.

Unless provided otherwise, all references in this letter ruling to § 168(k) refer 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 refer to final regulations under § 1.168(k)-2 published in the Federal Register on September 24, 2019 (84 FR 50108).

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer, a State limited liability company, is treated as a partnership for Federal income tax purposes. Taxpayer files a Form 1065, *U.S. Return of Partnership Income* (Form 1065) on a calendar year basis.

Taxpayer's overall method of accounting is the accrual method. The due date of Taxpayer's Form 1065 (including extensions) for the Taxable Year was Date1.

On the last day of the Taxable Year, X purchased an interest in Taxpayer's partnership property pursuant to a Purchase Agreement dated Date2. Under the Purchase Agreement, Taxpayer and X agreed to treat a portion of the purchase as a contribution of property to the partnership under § 721. As required under the Purchase Agreement, Taxpayer had in effect an election under § 754 election for the Taxable Year, allowing a § 743(b) step-up in X's basis in its interest in the partnership assets as a result of its purchase.

X believed that its interest in the partnership assets would be deemed to be placed in service on or after the first day of the taxable year following the end of the Taxable Year. However, nine days before Date1, X received a Schedule K-1 from Taxpayer that reflected the first-year additional depreciation deduction under § 168(k) for the amount of the § 743(b) basis adjustment for its interest in the partnership assets for the Taxable Year. Subsequently, on Date3, after X received the Schedule K-1 and before Date1, X's representative communicated to Taxpayer that X did not anticipate or intend (i) to be allocated the additional first year depreciation for the § 743(b) adjustment for the Taxable Year or (ii) to claim such depreciation for the § 743(b) adjustment. Prior to Date3, Taxpayer was unaware that X did not anticipate or intend (i) to be allocated the additional first year depreciation for the § 743(b) adjustment for the Taxable Year or (ii) to claim such depreciation. However, due to Taxpayer's misunderstanding of the application of the § 168(k)(7) election for the class of property described in § 1.168(k)-2(f)(1)(ii)(G), Taxpayer did not make the § 168(k)(7) election with respect to X's § 743(b) basis adjustment on the Form 1065 filing for the Taxable Year by Date1. Several months later, Taxpayer discovered that it could make the § 168(k)(7) election not to deduct the first-year additional depreciation under § 1.168(k)-2(f)(1)(ii)(G) for the § 743(b) basis adjustment allocated to X for the Taxable Year. However, Taxpayer was unable to make the § 168(k)(7) election for the Taxable Year with respect to X's interest in the partnership property because the extended due date for filing Taxpayer's Form 1065 had passed.

RULING REQUESTED

Accordingly, Taxpayer requests an extension of time under § 301.9100-3 to make the § 168(k)(7) election not to deduct the additional first year depreciation under § 168(k) with respect to X's § 743(b) basis adjustment for its interest in the class of property described in § 1.168(k)-2(f)(1)(ii)(G) for the Taxable Year.

LAW

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)(G) as each partner's basis adjustment in partnership assets under § 743(b) for each class of property described in § 1.168(k)-2(f)(1)(ii)(A)-(F), and § 1.168(k)-2(f)(2).

Section 1.743-1(j)(4)(B)(*1*) provides that a partnership may make an election under § 168(k)(7) and § 1.168(k)-2(f)(1) not to deduct the additional first year depreciation for an increase in the basis of qualified property as defined in § 168(k) and § 1.168(k)-2, in a class of property as defined in § 1.168(k)-2(f)1)(ii)(A)-(F), and placed in service in the same taxable year, even if the partnership does not make that election for all other qualified property of the partnership in the same class of property and placed in service in the year.

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. Section 1.168(k)-2(f)(1)(iii)(B) further requires the election for basis adjustments in the partnership assets under § 743(b) to be made by the partnership. The instructions to Form 4562 for the Year 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 for X not to deduct the additional first year depreciation under § 168(k) for the § 743(b) adjustment for the Taxable Year.

The election should be made in a written statement indicating that Taxpayer is electing not to deduct the additional first year depreciation with respect to the § 743(b) basis adjustment in the Taxpayer's partnership property for the Taxable Year and filed with the appropriate service center either: (1) to be associated with Taxpayer's Form 1065, Return of Partnership Income for the Taxable Year, 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.

Additionally, 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.

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) Part II, subchapter K of the Code, or their respective regulations. Specifically, no opinion is expressed or implied on (1) the year in which X's interest in the partnership property was placed in service for purposes of § 168, or the amount of X's basis in the partnership property; (2) whether Taxpayer's interest in any item of depreciable partnership property acquired under the Purchase Agreement is eligible for the additional first year depreciation deduction under § 168(k); or (3) whether Taxpayer made a proper election under § 754 for the Taxable Year.

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.

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,

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

Enclosures (2):
copy of this letter
6110 copy of letter

cc: