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Refer Reply To:
CC:ITA:B07
PLR-114877-23

Date: September 6, 2023

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

Legend

Taxpayer	=	
Taxable Year1	=	
Taxable Year2	=	
Date1	=	
Date2	=	
X	=	
Y federal tax credit	=	
Firm1	=	
Firm2	=	

Dear :

This letter responds to a letter dated July 18, 2023, 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 (Code) not to deduct additional first year depreciation under § 168(k) for the 15-year class of qualified property placed in service by Taxpayer during Taxable Year1. 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) 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). All references to § 168(e) refer to § 168(e) as in effect after amendment by section 2307 of the Corona Virus Aid, Relief, and Economic Security Act, Pub. L. 116-136, 134 Stat. 281 (March 27, 2020). All references to § 1.168(k)-2 of the Income Tax Regulations refer 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 a partnership for Federal income tax purposes and 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. Taxpayer is engaged in the business of X.

During Taxable Year1, Taxpayer placed in service certain depreciable property classified as 5-year property and qualified improvement property (as defined in § 168(e)(6)) that is classified as 15-year property under § 168(e)(3)(E)(vii) that is qualified property for the additional first-year depreciation deduction under § 168(k). Taxpayer engaged Firm1 to prepare and file its Form 1065 for Taxable Year1. Firm1 prepared Taxpayer's Form 1065 and attached a Form 4562, *Depreciation and Amortization*, for Taxable Year1 and timely filed Taxpayer's Form 1065 (including extensions) for Taxable Year1. However, Firm1 inadvertently misclassified the qualified improvement property as 39-year property. Firm1 also made an election under § 168(k)(7) not to claim the depreciation deduction under 168(k) for the 5-year class of property on the attached Form 4562.

Firm1 knew that Taxpayer intended to maintain its eligibility to claim Y federal tax credits, which required not claiming additional first-year depreciation under § 168(k) with respect to any qualified property that taxpayer placed in service Taxable Year1. Firm1 and Taxpayer were not aware that the qualified improvement property placed in service in Taxable Year1 is classified as 15-year property, and that the § 168(k)(7) election should have been made not to claim depreciation under § 168(k) for such property to be eligible for the Y federal tax credit for Taxable Year1.

On Date2, Taxpayer engaged Firm2 to prepare its Form 1065 for Taxable Year2. In reviewing Taxpayer's records, Firm2 became aware that the qualified improvement property was misclassified and the § 168(k)(7) election statement did not cover the qualified improvement property placed in service in Taxable Year1. Firm2 informed

Taxpayer that in order to maintain its eligibility for the Y federal tax credit, Taxpayer must file an election under § 168(k)(7) not to deduct additional first-year depreciation for the class of 15-year property Taxpayer placed in service in Taxable Year1.

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 its 15-year class of property that was placed in service by Taxpayer during Taxable Year1.

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 15-year class of property placed in service by Taxpayer during Taxable Year1. The election should be made in a written statement filed with the appropriate service center either: (1) to be associated with Taxpayer's Form 1065, Return of Partnership Income for Taxable Year1, 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 Taxable Year1, 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
Senior Counsel, Branch 7
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure:
copy of this letter for section 6110 purposes

cc: