Internal Revenue Service

Number: **202410010**
Release Date: 3/8/2024

Index Number: 9100.04-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

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Refer Reply To:
CC:ITA:B07
PLR-116095-23

Date:
December 12, 2023

Re: Request to Revoke the Election Not to Deduct the Additional First Year Depreciation

Legend

Dear :

This letter refers to a letter dated July 31, 2023, and supplemental information, submitted on behalf of Taxpayer by Taxpayer's authorized representative, requesting the consent of the Commissioner of Internal Revenue to revoke Taxpayer's election under § 168(k)(7) of the Internal Revenue Code not to deduct any additional first year depreciation that was made on its federal tax return for the Taxable Year. 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) 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 § 1.168(k)-2 regulations published in the Federal Register on November 10, 2020 (85 FR 71734).

FACTS

Taxpayer, an S corporation, is treated as a partnership for Federal income tax purposes and files a Form 1120-S, *U.S. Income Tax Return for an S Corporation*, on a calendar year basis (Form 1120-S). Taxpayer's overall method of accounting is the accrual method. Taxpayer timely filed its Form 1120-S for the Taxable Year. Taxpayer is engaged in the X business.

Taxpayer placed in service qualified property in the 3-year class, 5-year class, and 7-year class during the Taxable Year. However, Taxpayer made an election under § 168(k)(7) not to deduct the additional first year depreciation for all eligible classes of qualified property on its Form 1120-S for Taxable Year.

Firm worked with Taxpayer's Chief Financial Officer to prepare Taxpayer's Form 1120-S for the Taxable Year. Taxpayer's Form 1120-S for the Taxable year reflected an overall loss. As a result, Taxpayer made the election not to deduct the additional first year depreciation for all classes of eligible property on its Form 1120-S for the Taxable Year.

After Taxpayer's Form 1120-S was filed, Firm informed Taxpayer's officers that Taxpayer was eligible for a tax credit for the Taxable Year that was not claimed on Taxpayer's Form 1120-S. Firm advised Taxpayer that claiming the credit will result in a tax liability for the Taxable Year. Firm further advised Taxpayer that because the § 168(k)(7) election not to claim additional first year depreciation for the qualified property was made for the Taxable Year, Taxpayer was not permitted the depreciation deduction to offset the tax liability.

RULING REQUESTED

Accordingly, Taxpayer requests consent to revoke its § 168(k)(7) election not to deduct additional first year depreciation under § 168(k)(1) for the property in the above-mentioned classes that Taxpayer placed in service 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)(5) provides that an election under § 168(k)(7), once made, may generally be revoked only by filing a request for a private letter ruling and obtaining the Commissioner of Internal Revenue's written consent to revoke the election. The Commissioner may grant a request to revoke the election if the taxpayer acted reasonably and in good faith, and the revocation will not prejudice the interests of the Government.

CONCLUSION

Based solely on the facts and representations submitted, we conclude that the requirements of § 1.168(k)-2(f)(5) have been satisfied. Accordingly, Taxpayer is granted 60 calendar days from the date of this letter to revoke its election not to deduct any additional first year depreciation for the above-mentioned classes of qualified property placed in service by Taxpayer during the Taxable Year. The revocation must be made in a written statement filed with Taxpayer’s amended federal tax return for the Taxable Year.

Additionally, a copy of this letter should be attached to such amended return. 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 (1) 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), or (2) if any item of such property is eligible for the additional first year depreciation deduction, whether that item is qualified property as defined in § 168(k)(2).

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: