Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:

Telephone Number:

Refer Reply To:
CC:ITA:B07
PLR-109931-24
Date:
November 25, 2024

Re: Request for Extension of Time to Make the Election under § 168(k)(7) Not to Deduct the Additional First Year Depreciation

Legend

Taxpayer	=	
Taxable Year	=	
Year 1	=	
Date1	=	
Date2	=	
Date3	=	
Date4	=	
Firm	=	

Dear :

This letter refers to a letter dated May 24, 2024, 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 all classes of qualified property placed in service by Taxpayer during the Taxable Year. 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.

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 regulations under § 1.168(k)-2 published in the Federal Register on November 10, 2020 (85 FR 71734).

FACTS

Taxpayer is a limited liability company that is treated as a partnership and files a Form 1065, *U.S. Return of Partnership Income*, on a calendar year basis (Form 1065). Taxpayer's overall method of accounting is the accrual method.

Taxpayer engaged Firm to prepare its federal and state income tax returns for the Taxable Year around Date1. Firm has assisted Taxpayer with its return preparation since Year 1. As Taxpayer had done in previous years when it acquired certain depreciable property that was placed in service during a taxable year, Taxpayer and Firm discussed the potential tax impact of additional first year depreciation for the Taxable Year. Taxpayer informed Firm that Taxpayer would not deduct the additional first year depreciation with respect to all classes of qualified property placed in service during the Taxable Year.

Accordingly, Firm prepared Taxpayer's Form 1065 which included Form 4562, *Depreciation and Amortization*, showing Taxpayer did not claim the additional first year depreciation deduction during the Taxable Year. However, Firm inadvertently failed to include the necessary Election Statement required under § 168(k)(7). Firm provided a draft of Taxpayer's Form 1065, including Form 4562, to Taxpayer's tax department and CFO for review. Both the tax department and CFO agreed such return was consistent with Taxpayer's intent but neither knew an election statement was required to be attached to the return. Firm timely filed Taxpayer's Form 1065 electronically with the attached Form 4562 on Date1.

On Date3, in connection with a review of Taxpayer's filings, Firm discovered that the Election Statement was omitted from the Taxpayer's Form 1065 for the Taxable Year. On Date4, Firm informed Taxpayer of its oversight and inadvertent failure to include the Election Statement and informed Taxpayer of the availability to correct such oversight by filing a request for relief under § 301.9100-3. Taxpayer engaged Firm to prepare this request for relief.

RULING REQUESTED

Accordingly, 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 classes of qualified property placed in service by Taxpayer during 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) 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.

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.

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 all classes of qualified property that Taxpayer placed in service during the Taxable Year that qualify for the additional first year depreciation deduction. This election must be made by Taxpayer filing an amended Form 1065 for the Taxable Year, with a statement indicating that Taxpayer is electing not to deduct the additional first year depreciation for all classes of qualified property placed in service by Taxpayer in Taxable Year.

A copy of this letter should be attached to the amended Form 1065. 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) whether Taxpayer's classification of any item of depreciable property under § 168(e) or Rev. Proc. 87-56, 1987-2 C.B. 674, is correct.

The ruling contained in this letter is 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,

Deena M. Devereux

DEENA M. DEVEREUX
Branch Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures (2):
copy of this letter
copy for section 6110 purposes

cc: