Internal Revenue Service

Number: **202419015**
Release Date: 5/10/2024

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.
Telephone Number:

Refer Reply To:
CC:ITA:B07
PLR-121521-23

Date:
February 15, 2024

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

Legend

Symbol	*Identity*
Taxpayer	
The Taxable Year	
X	
Firm	
Date	
Month	

Dear :

This letter refers to a letter dated October 14, 2023, and subsequent correspondence, submitted by your representative on behalf of Taxpayer, 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 5-year and 15-year 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. 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 § 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 represents that the facts are as follows:

Taxpayer, a limited liability company, is classified as a real estate investment trust (REIT) for federal income tax purposes, and files a Form 1120-REIT, *U.S. Income Tax Return for Real Estate Investment Trusts* (Form 1120-REIT) on a calendar year basis. Taxpayer's overall method of accounting is an accrual method. Taxpayer is engaged in the business of X. Taxpayer made an election to be treated as a real property trade or business pursuant to § 163(j)(7)(B).

During the Taxable Year, Taxpayer placed in service depreciable property that is classified as (i) 5-year property and (ii) 15-year property that is qualified property under § 168(k)(2) of the Code.

Taxpayer engaged Firm to prepare and file its federal income tax return for the Taxable Year (the tax return for the Taxable Year). Taxpayer's tax return for the Taxable Year was timely filed on Date. On its tax return for the Taxable Year, Taxpayer intended to make the election under § 168(k)(7) not to deduct the additional first year depreciation for its 5-year and 15-year classes of property. Taxpayer did not deduct additional first year depreciation under § 168(k)(1) for the 5-year and the 15-year classes of property on its Form 4562, *Depreciation and Amortization*, for the Taxable Year. However, Firm inadvertently failed to file the required election statement not to deduct additional first year deprecation under § 168(k)(7) with the tax return for the Taxable Year.

During Month, Firm discovered that the § 168(k)(7) election statement not to deduct additional first year depreciation for the classes of qualified property was not attached to Taxpayer's return for the Taxable Year. Firm notified Taxpayer that the election not to deduct additional first year depreciation had not been properly made.

RULING REQUESTED

Accordingly, Taxpayer requests an extension of time under §§ 301.9100-1 and 301.9100-3 to make the election under § 168(k)(7) not to deduct additional first year depreciation for its 5-year and 15-year classes of property that were placed in service by Taxpayer during the Taxable Year.

LAW AND ANALYSIS

Sections 168(k)(1) allows, in the taxable year that qualified property is placed in service, a 100-percent additional first year depreciation deduction for qualified property

acquired by the taxpayer after September 27, 2017, and placed in service by the taxpayer after September 27, 2017, and before January 1, 2023 (or before January 1, 2024 for qualified property described in § 168(k)(2)(B) or (C)).

Section 168(k)(7) provides that a taxpayer may make an election not to deduct the additional first year depreciation for any class of property that is qualified property placed in service during the taxable year (the § 168(k)(7) election). Section 1.168(k)-2(f)(1)(i) of the Income Tax Regulations provides that the § 168(k)(7) election applies to all qualified property that is in the same class of property and placed in service in the same taxable year. Section 1.168(k)-2(f)(1)(ii) defines "class of property" for purposes of the § 168(k)(7) election as meaning each class of property described in § 1.168(k)-2(f)(1)(ii)(A)-(G).

Section 1.168(k)-2(f)(1)(iii)(A) provides that the § 168(k)(7) 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 property is placed in service by the taxpayer.

Section 1.168(k)-2(f)(1)(iii)(B) provides that the § 168(k)(7) 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, 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 an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making 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 that granting 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 the 5-year and 15-year classes of property placed in service by Taxpayer during the Taxable Year. This election must be made by Taxpayer by filing an amended Form 1120-REIT 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 during the Taxable Year.

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, 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).

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 representatives. We are also sending a copy of this letter ruling to the appropriate IRS operating division official.

Sincerely,

Elizabeth R. Binder
Senior Counsel, Branch 7
Office of Associate Chief Counsel
(Income Tax and Accounting)

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

cc: