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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-110092-11
Date:
May 13, 2011

Re: Request for Extension of Time to Make the Section 1400I(a)(1) Election

Legend

Taxpayer =
Building =

A =
B =
C =
$D =
State =
Date 1 =
Date 2 =
Date 3 =

Dear :

This letter responds to a letter dated November 30, 2010, and subsequent correspondence, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the election under § 1400I(a)(1) of the Internal Revenue Code to deduct one-half of the qualified revitalization expenditures attributable to Building, on its federal partnership tax return for the year ended Date 1 (the A taxable year).

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is a limited liability company engaged in the development and rental of real estate. Taxpayer's overall method of accounting is the cash method.

Taxpayer performed a substantial rehabilitation on Building, which is located in the C's renewal community. After rehabilitation, Taxpayer placed Building in service as of Date 2, which is in the A taxable year.

The B is the commercial revitalization agency authorized by State to allocate commercial revitalization expenditures in the C's renewal community. On Date 1, the B awarded an allocation of commercial revitalization expenditures in the total amount of $D to Taxpayer for Building. This allocation amount is less than the amount properly chargeable to a capital account for Building.

Taxpayer did not timely file its federal partnership tax return for the taxable year ended Date 1. Taxpayer filed its federal partnership tax return for the A taxable year on Date 3, which is after the due date (including extensions) of this return. On this return, Taxpayer made the election to deduct one-half of the qualified revitalization expenditures attributable to Building, which is equal to one half of $D.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the election under § 1400I(a)(1) to deduct one-half of the qualified revitalization expenditures attributable to Building, on its federal partnership tax return for the taxable year ended Date 1.

LAW AND ANALYSIS

Section 1400I allows a taxpayer to elect to recover a portion of the cost of a qualified revitalization building that is placed in service in a renewal community using a more accelerated method of depreciation than is otherwise allowable under § 168.

Pursuant to § 1400I(a), a taxpayer may elect either (1) to deduct one-half of any qualified revitalization expenditures chargeable to a capital account with respect to any qualified revitalization building for the taxable year in which the building is placed in service, or (2) to amortize all of these expenditures ratably over the 120-month period beginning with the month in which the building is placed in service.

The term "qualified revitalization building" is defined in § 1400(b)(1) as meaning any building and its structural components if (A) the building is placed in service by the taxpayer in a renewal community and the original use of the building begins with the taxpayer, or (B) the building is substantially rehabilitated (within the meaning of §47(c)(1)(C)) by the taxpayer and is placed in service by the taxpayer after the rehabilitation in a renewal community.

Pursuant to § 1400I(b)(2)(A), the term “qualified revitalization expenditure” means any amount properly chargeable to a capital account for property for which depreciation is allowable under § 168 (without regard to § 1400I) and that is (i) nonresidential real property (as defined in § 168(e)) or (ii) section 1250 property (as defined in § 1250(c)) that is functionally related and subordinate to the nonresidential real property.

Under § 1400I(d), the commercial revitalization agency for each state is permitted to allocate up to $12 million of commercial revitalization expenditure amounts with respect to each renewal community located within the state for each calendar year after 2001 and before 2010.

Pursuant to § 1400I(c), the aggregate amount that may be treated as qualified revitalization expenditures with respect to any qualified revitalization building cannot exceed the lesser of (1) $ 10 million, or (2) the commercial revitalization expenditure amount allocated to the building under § 1400I by the commercial revitalization agency for the state in which the building is located. If the amount of the allocation exceeds the amount properly chargeable to a capital account for the qualified revitalization building, the commercial revitalization expenditure amount is limited to the amount properly chargeable to a capital account for that building. A taxpayer may make a commercial revitalization deduction election for a qualified revitalization building only to the extent that qualified commercial revitalization expenditure amounts are allocated for the building.

Rev. Proc. 2003-38, 2003-1, C.B. 1017, provides the time and manner for states to make allocations under § 1400I of commercial revitalization expenditure amounts to a qualified revitalization building. Rev. Proc. 2003-38 also provides that a commercial revitalization agency may make a placed-in-service year allocation in accordance with section 4 of Rev. Proc. 2003-38 or a carryover allocation in accordance with section 6 of Rev. Proc. 2003-38.

Section 4.01 of Rev. Proc. 2003-38 provides that a placed-in-service year allocation is made in the calendar year in which the qualified revitalization building is placed in service by the taxpayer. Pursuant to section 4.02(1) of Rev. Proc. 2003-38, a placed-in-service year allocation is made for a qualified revitalization building when an allocation document containing the information set forth in section 4.02(2) of Rev. Proc. 2003-38 is completed, signed, and dated by an authorized official of the commercial revitalization agency.

Section 7 of Rev. Proc. 2003-38 explains how a taxpayer makes the election under § 1400I(a). Section 7.02(1) of Rev. Proc. 2003-38 provides that this election must be made by the due date (including extensions) of the federal tax return for the taxable year in which the qualified revitalization building is placed in service by the

taxpayer. The election must be made in the manner prescribed in the instructions for Form 4562, Depreciation and Amortization.

For the A taxable year, the instructions for Form 4562 state that a taxpayer can elect to deduct one-half of the qualified revitalization expenditures for the year the building is placed in service and the taxpayer reports this deduction on the applicable "Other Deductions" or "Other Expenses" line of the taxpayer's return.

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 the grant of relief will not prejudice the interests of the government.

CONCLUSIONS

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, an extension of time is granted for Taxpayer to make the election under § 1400I(a)(1) to deduct one-half of the qualified revitalization expenditures attributable to Building, on its federal partnership tax return for the taxable year ended Date 1. In this regard, we will consider the election made by Taxpayer on its federal partnership tax return for the A taxable year filed on Date 3 to be timely made.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the facts described above under any other provisions of the Code. Specifically, no opinion is expressed or implied on (1) whether Building is a qualified revitalization building (including whether Building is substantially rehabilitated within the meaning of § 47(c)(1)(C) and the regulations thereunder), (2) what costs of Building constitute qualified revitalization expenditures, or (3) whether the allocation of commercial revitalization expenditures in the total amount of $D to Taxpayer for Building is a valid allocation for the A taxable year, the calendar year in which Taxpayer placed Building in service. Further, this letter ruling does not grant an extension of time for filing Taxpayer's federal partnership tax return for the taxable year ended Date 1.

In accordance with the power of attorney, we are sending a copy of this letter to Taxpayer's authorized representative. We are also sending a copy of this letter to the appropriate operating division director.

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.

Sincerely,

Kathleen Reed

Kathleen Reed
Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax and Accounting)

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