Internal Revenue Service

Number: **201818004**
Release Date: 5/4/2018

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-124312-17

Date:
February 02, 2018

Re: Request for Extension of Time to Make the Partial Disposition Election

Legend

Taxpayer =
Tenant1 =
Tenant2 =
Date1 =
Date2 =
Date3 =
A =
B =
C =
D =

Dear :

This letter responds to a letter dated August 4, 2017, and subsequent correspondence, submitted by Taxpayer requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the partial disposition election under § 1.168(i)-8(d)(2) of the Income Tax Regulations for the taxable year ended on Date1 (the A taxable year).

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer, a calendar-year taxpayer, is a limited liability company that is classified as a partnership for federal tax purposes. Taxpayer acquires and owns office buildings for lease to tenants.

Taxpayer acquired and placed in service an office building on Date2, and leased it to Tenant1. Tenant1 vacated the office building in the fall of B. On Date3, Taxpayer leased the office building to Tenant2. Before Tenant2 moved into the office building, Taxpayer undertook and completed a tenant build-out project for the office building in A. In connection with the construction of the new tenant improvements for Tenant2, Taxpayer, in A, removed and disposed of the tenant improvements that Taxpayer had placed in service on Date2, for use by Tenant1. The total cost of the disposed tenant improvements was C for which a total of D in depreciation had been claimed.

Taxpayer engaged an accounting firm to prepare Taxpayer's Form 1065, U.S. Return of Partnership Income, for the A taxable year. The accounting firm knew that Tenant1 had vacated the office building and that Taxpayer undertook the above tenant build-out project. However, the accounting firm did not make appropriate inquiries of Taxpayer regarding the cost of the tenant improvements disposed of in connection with this build-out project. As a result, a partial disposition election for such disposed tenant improvements was not made on Taxpayer's Form 1065 for the A taxable year.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 to make a partial disposition election under § 1.168(i)-8(d)(2) on its Form 1065 for the taxable year ended on Date1, for the tenant improvements that were placed in service by Taxpayer on Date2, for use by Tenant1, and disposed of by Taxpayer during the taxable year ended on Date1.

LAW AND ANALYSIS

Pursuant to § 1.168(i)-8(a), § 1.168(i)-8 provides rules applicable to dispositions of MACRS property (as defined in § 1.168(b)-1(a)(2)) and also applies to dispositions described in § 1.168(i)-8(d)(1) of a portion of such property. Except as provided in § 1.168(i)-1(e)(3), § 1.168(i)-8 does not apply to dispositions of assets included in a general asset account.

Section 1.168(i)-8(b)(2) provides that, for purposes of § 1.168(i)-8, disposition occurs when ownership of the asset is transferred or when the asset is permanently withdrawn from use either in the taxpayer's trade or business or in the production of income. A disposition includes the sale, exchange, retirement, physical abandonment, or destruction of an asset. A disposition also occurs when an asset is transferred to a supplies, scrap, or similar account, or when a portion of an asset is disposed of as described in § 1.168(i)-8(d)(1). If a structural component, or a portion thereof, of a building is disposed of in a disposition described in § 1.168(i)-8(d)(1), a disposition also includes the disposition of such structural component or such portion thereof.

Section 1.168(i)-8(c)(1) provides that the manner of disposition (for example, normal retirement, abnormal retirement, ordinary retirement, or extraordinary retirement) is not taken into account in determining whether a disposition occurs or gain or loss is recognized.

Section 1.168(i)-8(c)(3)(i) provides that § 1.168(i)-8 also applies to a lessor of leased property that made an improvement to that property for the lessee of the property, has a depreciable basis in the improvement, and disposes of the improvement, or disposes of a portion of the improvement under § 1.168(i)-8(d)(1), before or upon the termination of the lease with the lessee.

Section 1.168(i)-8(c)(4)(i) provides that for purposes of applying § 1.168(i)-8, the facts and circumstances of each disposition are considered in determining what is the appropriate asset disposed of. The asset for disposition purposes may not consist of items placed in service by the taxpayer on different dates, without taking into account the applicable convention. For purposes of determining what is the appropriate asset disposed of, the unit of property determination under § 1.263(a)-3(e) or in published guidance in the Internal Revenue Bulletin under § 263(a) does not apply.

In addition to the general rules in § 1.168(i)-8(c)(4)(i) for purposes of applying § 1.168(i)-8, § 1.168(i)-4(c)(4)(ii)(A) provides that each building, including its structural components, is the asset except as provided in § 1.1250-1(a)(2)(ii) or in § 1.168(i)-8(c)(4)(ii)(B) or (D). Section 1.168(i)-8(c)(4)(ii)(D) provides that if the taxpayer places in service an improvement or addition to an asset after the taxpayer placed the asset in service, the improvement or addition and, if applicable, its structural components, are a separate asset.

Section 1.168(i)-8(d)(1)(i) provides that for purposes of applying § 1.168(i)-8, a disposition includes a disposition of a portion of an asset as a result of a casualty event described in § 165, a disposition of a portion of an asset for which gain, determined without regard to § 1245 or § 1250, is not recognized in whole or in part under § 1031 or § 1033, a transfer of a portion of an asset in a transaction described in § 168(i)(7)(B), or a sale of a portion of an asset, even if the taxpayer does not make the election under paragraph § 1.168(i)-8(d)(2)(i) for that disposed portion. For other transactions, a disposition includes a disposition of a portion of an asset only if the taxpayer makes the election under § 1.168(i)-8(d)(2)(i) for that disposed portion.

Section 1.168(i)-8(d)(2)(i) provides that a taxpayer may make an election to apply § 1.168(i)-8 to a disposition of a portion of an asset. If the asset is properly included in one of the asset classes 00.11 through 00.4 of Rev. Proc. 87–56, 1987-2 C.B. 674, a taxpayer may make an election to apply § 1.168(i)-8 to a disposition of a portion of such asset only if the taxpayer classifies the replacement portion of the asset under the same asset class as the disposed portion of the asset.

Section 1.168(i)-8(d)(2)(ii)(A) provides that except as provided in § 1.168(i)-8(d)(2)(iii) or (iv), a taxpayer must make the election specified in § 1.168(i)-8(d)(2)(i) by the due date, including extensions, of the original federal tax return for the taxable year in which the portion of an asset is disposed of by the taxpayer.

Section 1.168(i)-8(d)(2)(ii)(B) provides that except as provided in § 1.168(i)-8(d)(2)(iii) or (iv), a taxpayer must make the election specified in § 1.168(i)-8(d)(2)(i) by applying the provisions of § 1.168(i)-8 for the taxable year in which the portion of an asset is disposed of by the taxpayer, by reporting the gain, loss, or other deduction on the taxpayer's timely filed, including extensions, original federal tax return for that taxable year, and, if the asset is properly included in one of the asset classes 00.11 through 00.4 of Rev. Proc. 87–56, by classifying the replacement portion of such asset under the same asset class as the disposed portion of the asset in the taxable year in which the replacement portion is placed in service by the taxpayer. Except as provided in § 1.168(i)-8(d)(2)(iii) or (iv)(B) or except as otherwise expressly provided by other guidance published in the Internal Revenue Bulletin, the election specified in § 1.168(i)-8(d)(2)(i) may not be made through the filing of an application for change in accounting method.

Section 1.168(i)-8(e) provides that, solely for purposes of § 1.168(i)-8(e), the term “asset” is an asset within the scope of § 1.168(i)-8 or the portion of such asset that is disposed of in a disposition described in § 1.168(i)-8(d)(1) (disposition of a portion of an asset). Except as provided by § 280B and § 1.280B-1, the following rules apply when an asset is disposed of during a taxable year:

(1) If an asset is disposed of by sale, exchange, or involuntary conversion, gain or loss must be recognized under the applicable provisions of the Internal Revenue Code.

(2) If an asset is disposed of by physical abandonment, loss must be recognized in the amount of the adjusted depreciable basis (as defined in § 1.168(b)-1(a)(4)) of the asset at the time of the abandonment, taking into account the applicable convention. However, if the abandoned asset is subject to nonrecourse indebtedness, § 1.168(i)-8(e)(1) applies to the asset instead of § 1.168(i)-8(e)(2). For a loss from physical abandonment to qualify for recognition under § 1.168(i)-8(e)(2), the taxpayer must intend to discard the asset irrevocably so that the taxpayer will neither use the asset again nor retrieve it for sale, exchange, or other disposition.

(3) If an asset is disposed of other than by sale, exchange, involuntary conversion, physical abandonment, or conversion to personal use (as, for example, when the asset is transferred to a supplies or scrap account), gain is not recognized. Loss must be recognized in the amount of the excess of the adjusted depreciable basis of the asset at the time of the disposition, taking into account the applicable convention,

over the asset's fair market value at the time of the disposition, taking into account the applicable convention.

Section 1.168(i)-8(f)(3) applies only when a taxpayer disposes of a portion of an asset and § 1.168(i)-8(d)(1) applies to that disposition. For computing gain or loss, the adjusted basis of the disposed portion of the asset is the adjusted depreciable basis of that disposed portion at the time of its disposition, as determined under the applicable convention for the asset.

Section 1.168(i)-8(g)(1) provides that, except as provided in § 1.168(i)-8(g)(2) (asset disposed of is in a multiple asset account) or (3) (disposition of a portion of an asset), a taxpayer must use the specific identification method of accounting to identify which asset is disposed of by the taxpayer. Under this method of accounting, the taxpayer can determine the particular taxable year in which the asset disposed of was placed in service by the taxpayer. Section 1.168(i)-8(g)(3) (disposition of a portion of an asset) applies only if it is impracticable from the taxpayer's records to determine the particular taxable year in which the asset that included the disposed portion was placed in service.

Section 1.168(i)-8(h)(1) provides that depreciation ends for an asset at the time of the asset's disposition, as determined under the applicable convention for the asset. *See* § 1.167(a)-10(b). If a taxpayer disposes of a portion of an asset and § 1.168(i)-8(d)(1) applies to that disposition, depreciation ends for that disposed portion of the asset at the time of the disposition of the disposed portion, as determined under the applicable convention for the asset.

Section 1.446-1(e)(2)(ii)*(d)(3)(iii)* provides that generally the making of a late depreciation or amortization election or the revocation of a timely valid depreciation or amortization election is not a change in method of accounting, except as otherwise expressly provided by the Internal Revenue Code, the regulations under the Internal Revenue Code, or other guidance published in the Internal Revenue Bulletin. A taxpayer may request consent to make a late election or revoke a timely valid election by submitting a request for a private letter ruling.

Under § 301.9100-1, 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 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.

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 60 calendar days from the date of this letter to make the partial disposition election under § 1.168(i)-8(d)(2) for the tenant improvements that were placed in service by Taxpayer on Date2, for use by Tenant1, and disposed of by Taxpayer during the taxable year ended on Date1. This election must be made by Taxpayer filing an amended Form 1065 for the taxable year ended on Date1, and reporting the gain, loss, or other deduction from the disposition of such tenant improvements on that amended return. Please attach a copy of this letter ruling to the amended return.

Except as expressly set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code (including other subsections of § 168) or regulations. Specifically, no opinion is expressed or implied concerning whether: (1) the disposition of each tenant improvement that was placed in service by Taxpayer on Date2, for use by Tenant1, and disposed of by Taxpayer during the A taxable year is eligible for the partial disposition election; (2) Taxpayer's depreciation method, recovery period, convention, and placed-in-service date for any asset are correct; (3) the adjusted depreciable basis of the tenant improvements for which Taxpayer is making the partial disposition election is correct; and (4) Taxpayer has a depreciable interest in the tenant improvements for which Taxpayer is making the partial disposition election.

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 the ruling, it is subject to verification on examination.

This letter ruling is directed only to Taxpayer who requested 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 representative. We also are sending a copy of this letter ruling to the appropriate operating division director.

Sincerely yours,

KATHLEEN REED
KATHLEEN REED
Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax & Accounting)

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