

Internal Revenue Service

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Washington, DC 20224

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Date:
May 4, 2018

Re: Request for Extension of Time to Elect Straight Line Depreciation Method under
§ 168(b)(5) for Certain Property Placed in Service

Legend

Taxpayer =
TMP =

Administrative Member =
A =
B =
C =
Year1 =
Date1 =
Date2 =

Dear :

This letter ruling responds to a letter dated October 25, 2017, and supplemental correspondence, submitted by TMP on behalf of Taxpayer, requesting an extension of time to make the election under § 168(b)(5) of the Internal Revenue Code to use the straight line depreciation method for certain property placed in service during the taxable year ending Date1 (the "Year1 taxable year"). This request is made pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is a limited liability company that is treated as a partnership for U.S. federal income tax purposes. TMP owns a fifty percent interest in Taxpayer, and is the tax matters partner of Taxpayer. The remaining fifty percent interest in Taxpayer is owned by the Administrative Member. Taxpayer files its federal tax returns on a calendar year basis. Taxpayer's overall method of accounting is an accrual method.

During the Year1 taxable year, Taxpayer placed in service a mixed-use real estate development in A. Such property consisted of real and personal property. Based on a cost segregation study, Taxpayer classified the property under § 168(e) as 5-year property, 7-year property, 15-year property, and nonresidential real property.

The due date (without extensions) of Taxpayer's federal income tax return for the Year1 taxable year was Date2. For such tax return, Taxpayer failed to file Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns. Taxpayer's failure to file Form 7004 for the Year1 taxable year was due to a misunderstanding between TMP and Administrative Member. TMP mistakenly believed that Administrative Member was to engage an outside accounting firm to prepare and file Taxpayer's federal tax return for the Year1 taxable year, while Administrative Member mistakenly believed that TMP was to arrange for the preparation and filing of such tax return. Further, Administrative Member was unaware that the due date for filing Taxpayer's federal tax return was statutorily changed from B to C.

After Date2, Taxpayer filed its federal tax return for the Year1 taxable year. Taxpayer submitted a copy of such return to us. The Forms 4562, Depreciation and Amortization, attached to this return show that Taxpayer claimed depreciation for the 5-year, 7-year, and 15-year property placed in service during the Year1 taxable year by using a recovery period of 5, 7, and 15 years, respectively, the straight line method of depreciation, and the half-year convention. These Forms 4562 also show that Taxpayer claimed depreciation for the nonresidential real property placed in service during the Year1 taxable year by using a recovery period of 39 years, the straight line method of depreciation, and the mid-month convention. Taxpayer also attached to this return a statement stating that Taxpayer "elects under § 168(b)(3)(D) and (b)(5) to depreciate all items of five-year, seven-year, and fifteen-year property, which [T]axpayer placed into service during its tax year ending on [Date1], using the straight-line method."

Because Taxpayer did not timely file its federal tax return for the Year1 taxable year, Taxpayer failed to make the election under §§ 168(b)(3)(D) and 168(b)(5) to use

the straight line method of depreciation for all the 5-year, 7-year, and 15-year property placed in service during the Year1 taxable year.

RULING REQUESTED

Taxpayer requests an extension of time to make the election under § 168(b)(5) to use the straight line method of depreciation for 5-year, 7-year, and 15-year property placed in service during the taxable year ended Date1.

LAW

Section 167(a) provides that there is allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear, and obsolescence of property used in a trade or business or held for the production of income.

The depreciation deduction provided by § 167(a) for tangible property placed in service after 1986 generally is determined under § 168. This section prescribes two methods of determining depreciation allowances. One method is the general depreciation system in § 168(a) and the other method is the alternative depreciation system in § 168(g). Under either depreciation system, the depreciation deduction is computed by using an applicable depreciation method, recovery period, and convention.

Section 168(b) prescribes depreciation methods for purposes of the general depreciation system of § 168(a). Section 168(b)(1) states that except as provided in § 168(b)(2) and § 168(b)(3), the applicable depreciation method is the 200-percent declining balance method, switching to the straight line method for the first taxable year for which using the straight line method with respect to the adjusted basis as of the beginning of such year will yield a larger allowance.

Section 168(b)(2)(A) provides that the applicable depreciation method is the 150-percent declining balance method for any 15-year or 20-year property not referred to in § 168(b)(3).

Section 168(b)(3)(D) provides that the applicable depreciation method is the straight line method for property with respect to which the taxpayer elects under § 168(b)(5) to have the provisions of § 168(b)(3) apply.

Section 168(b)(5) provides that an election under § 168(b)(2)(C) or (3)(D) may be made with respect to one or more classes of property for any taxable year and once made with respect to any class shall apply to all property in such class placed in service during such taxable year. Such an election, once made, shall be irrevocable.

Section 301.9100-7T(a)(1) of the temporary Income Tax Regulations applies to elections provided under the Tax Reform Act of 1986, including the election under § 168(b)(5). Section 301.9100-7T(a)(1) provides that such election must be made for the taxable year in which the property is placed in service. Section § 301.9100-7T(a)(2) provides that the time for making such election is the due date, taking extensions into account, of the tax return for the first taxable year for which the election is to be effective. Section § 301.9100-7T(a)(3) provides that unless otherwise provided, such election shall be made by attaching a statement to the tax return for the taxable year for which the election is to be effective. Except as otherwise provided in the return or in the instructions accompanying the return for the taxable year, the statement shall contain the name, address, and taxpayer identification number of the electing taxpayer, identify the election, indicate the section of the Code under which the election is made, specify, as applicable, the period for which the election is being made and/or the property or other items to which the election is to apply, and provide any information required by the relevant statutory provisions and any information necessary to show that the taxpayer is entitled to make the election.

While the instructions to Form 4562 for the Year1 taxable year provided that a taxpayer can make an irrevocable election to use the straight line method for all property within a classification that is placed in service during the taxable year, it did not specifically state how to make such election.

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 an extension to, and including, the date on which Taxpayer filed its federal tax return for the taxable year ended Date1, to make the election under § 168(b)(5) to use the straight line method of depreciation for the 5-year, 7-year, and

15-year property placed in service by Taxpayer during the taxable year ended Date1. In this regard, we will consider this election made by Taxpayer on its federal tax return for the taxable year ended Date1, which was filed after its due date, to be timely made.

Except as specifically ruled upon above, no opinion is expressed or implied concerning the federal 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 (i) Taxpayer's classifications of the items of property placed in service during the Year1 taxable year is proper under § 168(e), or (ii) any item of depreciable property placed in service by Taxpayer during the Year1 taxable year is eligible for the additional first year depreciation deduction provided by § 168(k)(1).

Further, this letter ruling does not grant an extension of time for filing Taxpayer's federal tax return for the taxable year ended Date1.

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 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 operating division director.

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