

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202210013**
Release Date: 3/11/2022
Index Number: 9100.04-00

Third Party Communication: None
Date of Communication: Not Applicable

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Refer Reply To:
CC:ITA:B07
PLR-114778-21

Date:
December 10, 2021

Re: Request for extension of time to make the election not to deduct the additional first year depreciation

Legend

Taxpayer =
Firm =
Taxable Year =
Date1 =
Date2 =

Dear :

This letter ruling responds to a letter dated April 8, 2021, submitted by your authorized representative on behalf of Taxpayer. In that letter, Taxpayer requests the consent of the Commissioner of Internal Revenue (Commissioner) to grant an extension of time pursuant to §§ 301.9100 and 301.9100-3 of the Procedure and Administration Regulations to make the election not to deduct the additional first year depreciation under § 168(k) of the Internal Revenue Code for all classes of qualified property placed in service by Taxpayer during the Taxable Year. This letter ruling is being issued electronically in accordance with section 7.02(5) of Rev. Proc. 2021-1, 2021-1 I.R.B. 1, 35. A paper copy will not be mailed.

All references in this letter ruling to § 168(k) refer to § 168(k) as in effect on the day before the date of the enactment of the Taxpayer Certainty and Disaster Tax Relief

Act of 2020, enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (December 27, 2020).

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer, a partnership, files a Form 1065, *U.S. Return of Partnership Income*, on a calendar year basis. Taxpayer's overall method of accounting is an accrual method. Taxpayer's primary trade or business is equipment leasing.

Taxpayer engaged Firm to prepare and file its Federal income tax return for the Taxable Year. Taxpayer intended to make the election under § 168(k)(7) to not claim the additional first year deduction for certain classes of qualified property that Taxpayer placed in service during the Taxable Year. The due date of Taxpayer's Form 1065 for the Taxable Year, with extensions, was Date1.

Taxpayer uses lease tracking software to generate reports necessary to prepare its financial statements, a required external audit, and its Federal income tax return. In the Taxable Year, Taxpayer needed to change from its then current lease tracking software to a new leasing software program with a different provider. Due to unforeseen circumstances, including delays in converting from the old software program to the new software program, Taxpayer was not able to provide Firm the information necessary to complete the preparation of Taxpayer's Federal income tax return for Taxable Year by the due date, Date1. Instead, Firm filed Taxpayer's Form 1065 for the Taxable Year, on Date2, which is after the due date. On the Form 4562, *Depreciation and Amortization*, attached to its late-filed Form 1065, Taxpayer did not deduct any additional first year depreciation for property placed in service by Taxpayer during the Taxable Year. The late-filed Form 1065 also included the election statement not to claim the additional first year depreciation for all property placed in service by Taxpayer during the Taxable Year, that would otherwise qualify for the additional first year depreciation deduction under § 168(k) and that is in the following classes of property: 3-year property, 5-year property, 7-year property, 15-year property, and computer software for which a deduction is allowable under § 167(a), and qualified improvement property.

RULING REQUESTED

Accordingly, Taxpayer requests 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) not to deduct the additional first year depreciation for all classes of property that are qualified property under § 168(k) and placed in service by Taxpayer during the Taxable Year.

LAW AND ANALYSIS

Sections 168(k)(1) and (6) allow, 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, provided 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 time to make the election under § 168(k)(7) not to deduct the additional first year depreciation for all classes of property placed in service by Taxpayer during the Taxable Year, that qualify for the additional first year depreciation deduction. In this regard, we will consider the § 168(k)(7) election made by Taxpayer on its Form 1065 for the Taxable Year, filed on Date2, to be timely made.

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).

Further, this letter ruling does not grant any extension of time for filing Taxpayer's Form 1065 for the Taxable Year.

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,

EVAN K. HEWITT
Assistant to the Branch Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax and Accounting)

Enclosures (2):

copy of this letter
copy for section 6110 purposes

cc: