

Internal Revenue Service

Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

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Date:
March 06, 2023

Legend

Taxpayer =
Firm =
Taxable Year =
Date1 =
Date2 =
Date3 =

Dear :

This letter responds to a letter dated December 21, 2022, submitted by Taxpayer. In that letter, Taxpayer requests the consent of the Commissioner of Internal Revenue (Commissioner) to grant an extension of time pursuant to §§ 301.9100-1 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 as permissible under section 7.02(5) of Rev. Proc. 2022-1, 2022-1 I.R.B. 1, 35.

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 limited liability company, files a Form 1065, *U.S. Return of Partnership Income*, on a calendar-year basis. Taxpayer's overall method of accounting is the cash receipts and disbursements method.

Taxpayer engaged Firm to prepare and file its federal income tax return for the Taxable Year. On Date1, Taxpayer's owners and Firm's team met to discuss various accounting and tax matters. One item discussed was Taxpayer's intent to elect not to deduct additional first year depreciation for all classes of property that are qualified property and that were placed in service by Taxpayer during the Taxable Year. Firm personnel documented Taxpayer's intent to make this election.

Between Date1 and Date2, Firm prepared Taxpayer's return, including Form 1065 and Form 4562, *Depreciation and Amortization (Including Information on Listed Property)*, consistent with an election not to claim the additional first year depreciation deduction under § 168(k) for all classes of property placed in service in the Taxable Year.

On Date2, Taxpayer's return was timely filed. However, Firm personnel inadvertently failed to attach the required election statement to the Form 1065.

In Date3, Firm discovered its error. Taxpayer then promptly filed this request to obtain an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 to make the election not to deduct additional first year depreciation.

RULING REQUESTED

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

LAW

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) allows a taxpayer to elect out of additional first year depreciation for any class of property placed in service during the taxable year.

For property acquired after September 27, 2017, § 1.168(k)-2(f)(1) of the Income Tax Regulations provides the rules for making the § 168(k)(7) election. Pursuant to § 1.168(k)-2(f)(1)(i), 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 the term “class of property” as meaning, among other things, each class of property described in § 168(e) (for example, 5-year property).

Section 1.168(k)-2(f)(1)(iii) provides the time and manner of making the § 168(k)(7) election.

Section 1.168(k)-2(f)(1)(iii)(A) provides that the election not to deduct the 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 qualified property is placed in service by the taxpayer.

Section 1.168(k)-2(f)(1)(iii)(B) provides that the election not to deduct the 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(a), 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.

Section 301.9100-1(b) provides that the term “regulatory election” includes an election whose due date is prescribed by a regulation published in the Federal Register.

Sections 301.9100-1 through 301.9100-3 provide the standards that 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 election under § 168(k)(7) not to deduct the additional first year depreciation deduction under § 168(k) for all classes of property that are qualified property and that were placed in service by Taxpayer in the Taxable Year. This election must be made by Taxpayer filing an amended federal income tax return for the Taxable Year, with a statement indicating that Taxpayer is electing not to deduct the additional first year depreciation for all classes of property that are qualified property placed in service during that taxable year.

Except as specifically set forth above, no opinion is expressed or implied 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: (1) any item of depreciable property placed in service by Taxpayer in the Taxable Year, is eligible for the additional first year depreciation deduction under § 168(k) or (2) Taxpayer's classification of any item of depreciable property under § 168(e) or Rev. Proc. 87-56, 1987-2 C.B. 674, is correct.

The ruling contained in this letter is based upon information and representations submitted by the 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 rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives. We are also sending a copy of this letter to the appropriate operating division director.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this

requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Charles J. Magee

CHARLES J. MAGEE
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: