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

Telephone Number:

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CC:ITA:B06
PLR-101152-23

Date:
June 27, 2023

LEGEND

Taxpayer	=	
Taxable Year	=	
Firm	=	
Date1	=	
Date2	=	

Dear :

This letter ruling responds to a letter dated January 11, 2023, and supplemental correspondence, submitted by Taxpayer, requesting an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make (1) an election not to deduct additional first year depreciation under § 168(k) of the Internal Revenue Code for all classes of qualified property that were placed in service in Taxable Year, and (2) an election under § 59(e) to deduct research and experimentation expenditures incurred by Taxpayer for Taxable Year, ratably over a ten-year period.

All references in this letter ruling to § 168(k) are treated as a reference to § 168(k) as in effect after amendment by Public Law 115-97, 131 Stat. 2054 (Dec. 22, 2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA). Further, all references in this letter ruling to § 1.168(k)-2 of the Income Tax Regulations are treated as a reference to the final regulations under § 1.168(k)-2 that were published on September 24, 2019, in the Federal Register (84 FR 50108). Pursuant to § 1.168(k)-2(h)(1)(i), § 1.168(k)-2 applies to qualified property under § 168(k)(2) that is placed in service during or after the taxpayer's taxable year that includes September 24, 2019.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer, a C corporation, files a Form 1120, *U.S. Corporation Income Tax Return*, on a calendar-year basis. Taxpayer's overall method of accounting is an accrual method. For Taxable Year, Taxpayer planned to make the election not to deduct the additional first year depreciation under § 168(k) for all classes of qualified property placed in service by Taxpayer in Taxable Year, and to make the election to deduct research and experimental expenditures incurred by Taxpayer in Taxable Year, over a 10-year period under § 59(e)(1).

Taxpayer engaged Firm to assist with the fulfillment of its federal income tax filing obligations, including the preparation of Form 1120 for Taxable Year. The due date (with extension) of Taxpayer's federal income tax return for Taxable Year, was Date1. Taxpayer relied on Firm to prepare and timely file Taxpayer's federal income tax return for Taxable Year.

Firm prepared the tax return for Taxpayer with respect to Taxable Year, reflecting Taxpayer's intention to make the election under § 168(k)(7) to forgo the additional first year depreciation deduction for all classes of property placed in service during Taxable Year, and to elect under § 59(e) to capitalize research and experimental expenditures incurred in Taxable Year, and ratably deduct such expenditures over a 10-year period.

Taxpayer's federal income tax return for Taxable Year, was timely filed on Date2. However, due to inadvertent delays in finalizing the tax return and supporting elections and statements, Firm submitted Taxpayer's federal income tax return electronically without the intended election statements. Because Taxpayer did not appropriately attach the required statements, Taxpayer failed to make the elections under § 168(k)(7) and § 59(e)(1) for Taxable Year.

Taxpayer has represented that, in requesting an extension of time to make the elections under §§ 168(k)(7) and 59(e) for Taxable Year, it acted reasonably and in good faith and, further, there is no prejudice to the interest of the Government.

RULING REQUESTED

Accordingly, Taxpayer requests an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 to make the election not to deduct the additional first year depreciation under § 168(k)(7) and § 1.168(k)-2(f)(1)(i) for all classes of property that are qualified property and that were placed in service by Taxpayer in Taxable Year, and to make the election under § 59(e)(1) and § 1.59-1(b)(1) to deduct ratably over a 10-year period research and experimental expenditures described in § 174(a) that were incurred by Taxpayer in Taxable Year.

LAW AND ANALYSIS

Section 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 placed in service by the taxpayer during Taxable Year.

Section 168(k)(7) allows a taxpayer to elect out of additional first year depreciation for any class of property placed in service during a taxable year.

For property acquired after September 27, 2017, § 1.168(k)-2(f)(1) 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 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.

For amounts paid or incurred in taxable years beginning prior to 2022, § 174(a) provides, in general, that a taxpayer may treat research and experimental expenditures that are paid or incurred by the taxpayer during the taxable year in connection with the taxpayer’s trade or business as expenses which are not chargeable to capital account. The expenditures so treated are allowed as a deduction.

Section 59(e)(1) allows a taxpayer, in general, to deduct ratably over the 10-year period any qualified expenditure to which an election under § 59(e) applies, beginning with the taxable year in which such expenditure was made.

Section 59(e)(2)(B) includes in the definition of “qualified expenditure” any amount which, but for an election under § 59(e), would have been allowable as a deduction for the taxable year in which paid or incurred under § 174(a) (relating to research and experimental expenditures).

Section 59(e)(3) specifically prohibits the deduction of the qualified expenditures under any other section of the Code if the option under § 59(e) is elected.

Section 59(e)(4)(A) provides that an election under § 59(e)(1) may be made with respect to any portion of any qualified expenditure.

Section 59(e)(4)(B) provides that an election made under § 59(e) may be revoked only with the consent of the Secretary.

Section 1.59-1(b)(1) provides that an election under § 59(e) shall only be made by attaching a statement to the taxpayer's income tax return (or amended return) for the taxable year in which the amortization of the qualified expenditures subject to the § 59(e) election begins. The statement must be filed no later than the date prescribed by law for filing the taxpayer's original income tax return (including any extensions of time) for the taxable year in which the amortization of the qualified expenditures subject to the § 59(e) election begins. Additionally, the statement must include the taxpayer's name, address, and taxpayer identification number, and the type and amount of qualified expenditures identified in § 59(e)(2) that the taxpayer elects to deduct ratably over the applicable period described in § 59(e)(1).

Section 1.59-1(b)(2) provides, in part, that a taxpayer may make an election under § 59(e) with respect to any portion of any qualified expenditure paid or incurred by the taxpayer in the taxable year to which the election applies. An election under § 59(e) must be for a specific dollar amount and the amount subject to an election under § 59(e) may not be made by reference to a formula.

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 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 rules for requesting extensions of time for regulatory 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.

CONCLUSIONS

Based solely on the facts submitted and representations made by Taxpayer, 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 (1) the election not to deduct the additional first year depreciation under § 168(k) for all classes of qualified property placed in service by Taxpayer during Taxable Year; and (2) an election under § 59(e) and § 1.59-1(b)(1) to deduct ratably over a 10-year period research and experimental expenditures paid or incurred during Taxable Year.

The election under § 168(k)(7) must be made by filing an amended federal income tax return for 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.

The § 59(e) election must comply with the manner-of-election requirements of § 1.59-1(b)(1).

In making these elections for Taxable Year, Taxpayer must attach a copy of this letter ruling to its amended federal income tax return. Alternatively, if Taxpayer files its amended federal income tax return electronically, it may satisfy this requirement by attaching a statement to its amended return that provides the date and control number of this letter ruling.

Except as specifically ruled upon above, no opinion is expressed or implied concerning the 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 (1) whether any item of depreciable property placed in service by Taxpayer in Taxable Year, is eligible for the additional first year depreciation deduction under § 168(k) or (2) whether Taxpayer's classification of any item of depreciable property under § 168(e) or Rev. Proc. 87-56, 1987-2 C.B. 674, is correct. Furthermore, we express or imply no opinion as to whether Taxpayer satisfies the requirements of §§ 59(e) and 174(a).

The rulings contained in this letter are based solely upon the information and representations submitted by Taxpayer and accompanied by a statement under penalty of perjury, executed by an appropriate party. While this office has not verified any of the information submitted in support of the requested ruling, the information is subject to verification upon examination.

This 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, 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.

Sincerely yours,

Charles J. Magee

Charles J. Magee
Senior Counsel, Branch 7
(Income Tax & Accounting)

cc: