Internal Revenue Service

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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:7
PLR-100673-23
Date: July 10, 2023

Re: Request for Extension of Time to Make the Election Not to Deduct the Additional First Year Depreciation

Legend

Taxpayer	=	
Taxable Year	=	
Date1	=	
Date2	=	
Date3	=	
Firm1	=	
Accountant	=	
Firm2	=	

Dear Taxpayer:

This letter responds to a letter dated December 20, 2022, and subsequent correspondence submitted by your authorized representatives on behalf of Taxpayer. 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)(7) of the Internal Revenue Code for all classes of qualified property placed in service during 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.

Unless provided otherwise, all references in this letter ruling to § 168(k) are treated as a reference to § 168(k) as in effect after amendment by the Tax Cuts and Jobs Act, Pub. L. 115-97, 131 Stat. 2054 (December 22, 2017). Further, all references 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 November 20, 2020, in the Federal Register (84 FR 71734).

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 the accrual method. The due date of Taxpayer's Form 1065 (including extensions) for Taxable Year was Date1.

Taxpayer engaged Firm1 to prepare and file its federal income tax return for Taxable Year. Accountant was employed by Firm1 and was aware that Taxpayer intended to make the election under § 168(k)(7) not to claim the additional first year depreciation for all classes of qualified property that Taxpayer placed in service during Taxable Year.

Accountant prepared Taxpayer's federal return which included Form 4562, *Depreciation and Amortization*, showing Taxpayer did not claim the additional first year depreciation deduction for any qualified property placed in service during Taxable Year. Taxpayer reviewed the prepared federal income tax return for Taxable Year which was timely filed on Date2.

However, due to Accountant's error, the election statement not to deduct additional first year depreciation was not attached to Taxpayer's federal income tax return for Taxable Year. An independent audit team from Firm2 discovered the missing election statement on Date3, during a review of Taxpayer's Taxable Year financial statements and accompanying documents, after the due date of Taxpayer's return for Taxable Year.

Taxpayer relied on the assistance and advice of Accountant and Firm1 in complying with its federal income tax reporting obligations for Taxable Year. Accountant and Firm1 were aware of the requirement to include an attachment reflecting the election not to deduct the additional first year depreciation on Taxpayer's federal income tax return for Taxable Year. However, Accountant inadvertently omitted the required election statement. Taxpayer now seeks to correct the omission through this ruling request for late election relief to ensure that Taxpayer is in full compliance with its federal tax reporting obligations.

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

Section 168(k)(1) allows, for the taxable year in which qualified property is placed in service, an additional first year depreciation deduction equal to the applicable percentage of the adjusted basis of that qualified property.

For qualified property acquired by a taxpayer after September 27, 2017, §§ 168(k)(6)(A)(i) and (B)(i) provide that the applicable percentage is 100 percent for qualified property placed in service by the taxpayer after September 27, 2017, and before January 1, 2023 (before January 1, 2024, for qualified property described in § 168(k)(2)(B) and (C)).

Section 168(k)(7) provides that a taxpayer may elect not to deduct the additional first year depreciation for any class of property placed in service during the taxable year. Section 1.168(k)-2(f)(1)(i) provides that if this election is made, the election applies to all qualified property that is in the same class of property and placed in service in the same taxable year, and no additional first year depreciation deduction is allowable for the property placed in service during the taxable year in the class of property, except as provided in § 1.743-1(j)(4)(i)(B)(*1*). The term "class of property" is defined in § 1.168(k)-2(f)(1)(ii) 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)(A) provides that the 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 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 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 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 a regulatory 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 making 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 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 of 60 calendar days from the date of this letter ruling to make the election not to deduct the additional first year depreciation under § 168(k)(7) for all classes of qualified property placed in service by Taxpayer during Taxable Year. The election should be made in a written statement filed with the appropriate service center either: (1) to be associated with Taxpayer's Form 1065, *U.S. Return of Partnership Income*, for the Taxable Year, or (2) accompanying Form 8082, *Notice of Inconsistent Treatment of Administrative Adjustment Request* (AAR), and any related filings as instructed on Form 8082, as appropriate.

A copy of this letter should be attached to the relevant filing. A taxpayer filing its federal return electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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).

The rulings contained in this letter are 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 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 IRS operating division director.

Sincerely,

DEENA M. DEVEREUX
Branch Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures (2):

copy of this letter
copy for section 6110 purposes

cc: