

## Internal Revenue Service

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Washington, DC 20224

Third Party Communication: None

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Person To Contact:

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CC:ITA:B07

PLR-100662-23

Date:

March 14, 2023

Re: Request for Extension of Time to Make the Election Under § 168(k)(7) Not to Deduct Additional First Year Depreciation

### Legend

Taxpayer =  
Firm =  
Taxable Year =  
State =  
Date1 =

Dear :

This letter responds to a letter dated December 20, 2022, and subsequent correspondence, submitted by your 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 (Code) for all classes of qualified property placed in service by Taxpayer during the Taxable Year.

### FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is treated as a partnership for federal income tax purposes and files a Form 1065, *U.S. Income Tax Return for Partnership Income*, on a calendar year basis. Taxpayer's overall method of accounting is the accrual method.

During the Taxable Year, Taxpayer placed in service property that is classified as 5-year property or 7-year property and is qualified property under § 168(k)(2) of the Code (collectively, classes of property). On its timely filed federal tax return for the Taxable Year, Taxpayer deducted the additional first year depreciation for the classes of property.

Taxpayer engaged Firm to prepare its federal income tax return for the Taxable Year. Taxpayer reviewed this federal income tax return prior to its filing, but was not aware at that time of certain unfavorable state tax implications to one or more partners of Taxpayer stemming from Taxpayer's deduction of the additional first year depreciation on its federal income tax return for its Taxable Year. These implications were discovered after the Taxpayer filed its federal income tax return on Date1, in connection with a partner's State income tax return.

Firm was also not aware that Taxpayer's claiming the additional first year depreciation deduction on its federal income tax return for the Taxable Year would result in unfavorable State tax implications that impacted one or more partners of Taxpayer. As a result, Firm did not advise Taxpayer to make the election not to deduct the additional first year depreciation for the classes of property placed in service during the Taxable Year.

#### 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 deduction 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) 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 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, 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 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) for all classes of qualified property placed in service by Taxpayer during the Taxable Year. This election must be made by Taxpayer filing an amended Form 1065 for the Taxable Year, with a statement indicating that Taxpayer is electing not to deduct the additional first year depreciation for all classes of qualified property placed in service by Taxpayer during the Taxable Year.

Except as specifically set forth above, we express no opinion 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 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).

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,

s/Elizabeth R. Binder

ELIZABETH R. BINDER  
Assistant to the Branch Chief, Branch 7  
Office of Associate Chief Counsel  
(Income Tax and Accounting)

Enclosures (2):

Copy of letter

Copy for § 6110 purposes

cc: