

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:B07

PLR-111210-22

Date:

December 5, 2022

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

Legend:

<i>Symbol</i>	<i>Identity</i>	<i>EIN #</i>
Taxpayer		
Taxable Year		
Activity		
Firm		

Dear :

This letter responds to a letter dated May 31, 2022 and subsequent correspondence submitted by your authorized representative on behalf of Taxpayer. In such letter and subsequent correspondence, 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 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.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer, an S corporation, files a Form 1120-S, *U.S. Income Tax Return for an S Corporation*, on a calendar-year basis. Taxpayer's overall method of accounting is an accrual method. Taxpayer's primary trade or business consists of Activity.

Taxpayer engaged Firm, an outside tax consulting firm, to prepare and file its Federal income tax return for Taxable Year. Taxpayer, with the assistance of Firm, timely filed its Federal income tax return for Taxable Year.

Taxpayer intended to make the election under § 168(k)(7) to not claim the additional first year deduction for all classes of qualified property that Taxpayer placed in service during Taxable Year. Further, Taxpayer did not claim the additional first year depreciation deduction for any qualified property placed in service during Taxable Year on Taxpayer's Form 4562, *Depreciation and Amortization*.

However, due to Firm's error, Taxpayer inadvertently failed to attach the election not to deduct additional first year depreciation to its Federal income tax return for Taxable Year. Firm discovered the missed election after the due date of Taxpayer's return for Taxable Year.

On all Federal income tax returns filed after Taxable Year, Taxpayer determined the depreciation deduction under Section 168 for all classes of qualified property placed in service during Taxable Year as if Taxpayer had made a timely election not to deduct the additional first year depreciation.

RULING REQUESTED

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

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 301.9100-1(c) provides that the Commissioner has the discretion to grant a reasonable extension of time under the rules in §§ 301.9100-1(c) and 301.9100-3 to make certain regulatory elections. Section 301.9100-1(b) defines a regulatory election as an election with a due date prescribed by regulations published in the Federal Register, or in a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

The requested election not to deduct additional first year depreciation is a regulatory election as defined under § 301.9100-1(b) because the due date of the election is prescribed in § 1.168(k)-2(f)(1)(iii)(A). Furthermore, Taxpayer's request must be analyzed under the requirements of § 301.9100-3 because the automatic provisions of § 301.9100-2 are not applicable.

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 for all classes of property placed in service by Taxpayer during Taxable Year, that qualify for the additional first year depreciation deduction. This election must be made by Taxpayer filing an amended Federal 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 placed in service during that taxable year.

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).

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
Senior Technician Reviewer, Branch 7
Office of Associate Chief Counsel (Income Tax
and Accounting)

Enclosures (2):

copy of this letter
copy for section 6110 purposes

cc: