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:PSI:6
PLR-152820-05
Date:
March 06, 2006

Re: Request to revoke the election not to deduct the additional first year depreciation

Taxpayer =
A =
B =
SB/SE Official =

Dear :

This letter responds to a letter dated February 2, 2005, and supplemental correspondence, requesting the consent of the Commissioner of Internal Revenue to revoke Taxpayer's election not to deduct any (both the 30-percent and the 50-percent) additional first year depreciation made on its B federal tax return for the taxable year ended A.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer, a calendar year end partnership, operates a senior apartment complex for rental to elderly low-income individuals. Taxpayer is an accrual basis taxpayer. In 2001, Taxpayer acquired a parcel of land and constructed a senior living facility for use in its trade or business. Construction was completed in the taxable year ended A and all assets were placed in service For the federal tax return timely filed for the taxable year ended A, Taxpayer made an election not to deduct any (both the 30-percent and the 50-percent) additional first year depreciation under section 168(k) of the Internal Revenue Code for all eligible classes of property placed in service during that taxable year.

Taxpayer engaged a qualified tax professional to prepare its federal tax return for the taxable year ended A. Based upon their experience in preparing income tax returns for other taxpayers that operate senior living facilities, this tax preparer made the

election not to deduct any (both the 30-percent and the 50-percent) additional first year depreciation on Taxpayer's B tax return. The election was made by the tax preparer without consulting Taxpayer or its Tax Matters Partner. Taxpayer relied upon its tax preparer to prepare its tax return, including all appropriate elections, for the B taxable year.

Subsequent to filing Taxpayer's B federal tax return, one of Taxpayer's partners discovered that Taxpayer's B federal tax return was prepared incorrectly in that the return contained the election not to deduct the additional first year depreciation. If the tax preparer had consulted with Taxpayer or its Tax Matters Partner about this matter, Taxpayer would have advised the tax preparer not to make this election on Taxpayer's B federal tax return.

RULING REQUESTED

Consequently, Taxpayer requests to revoke the election not to deduct any (both the 30-percent and the 50-percent) additional first year depreciation made on Taxpayer's B federal tax return for the taxable year ended A.

LAW

Section 168(k)(4) provides a 50-percent additional first year depreciation deduction for the taxable year in which 50-percent bonus depreciation property is placed in service by a taxpayer. Section 168(k)(4)(E) allows a taxpayer to deduct the 30-percent (instead of the 50-percent) additional first year depreciation for any class of property placed in service during the taxable year.

Section 168(k)(2)(D)(iii) provides that a taxpayer may elect not to deduct the 30-percent additional first year depreciation for any class of property placed in service during the taxable year.

With respect to 50-percent bonus depreciation property, section 1.168(k)-1T(e)(1)(ii) of the temporary Income Tax Regulations provides that a taxpayer may elect to deduct the 30-percent, instead of the 50-percent, additional first year depreciation for any class of property placed in service during the taxable year, or may elect not to deduct any additional first year depreciation for any class of property placed in service during the taxable year. The term "class of property" is defined in section 1.168(k)-1T(e)(2).

Section 168(k)(4)(A)(ii) provides that except as provided under section 168(k)(2)(D), 50-percent bonus depreciation property shall be treated as qualified property for purposes of section 168(k).

Section 3.04 of Rev. Proc. 2002-33, 2002-1 C.B. 963, provides that an election not to deduct the additional first year depreciation for a class of property that is qualified property or Liberty Zone property placed in service during the taxable year is revocable only with the prior written consent of the Commissioner of Internal Revenue. To seek the Commissioner's consent, the taxpayer must submit a request for a letter ruling.

CONCLUSIONS

Based solely on the facts and representations submitted, we conclude that a revocation of Taxpayer's election not to deduct any (both the 30-percent and the 50-percent) additional first year depreciation for the taxable year ended A is permitted under Rev. Proc. 2002-33. Accordingly, Taxpayer is granted 60 calendar days from the date of this letter to revoke its election not to deduct any (both the 30-percent and the 50-percent) additional first year depreciation for all classes of property placed in service by Taxpayer in the taxable year ended on A. The revocation must be made in a written statement filed with Taxpayer's amended federal tax return for the taxable year ended on A. In addition, a copy of this letter must be attached to such amended return. A copy is enclosed for that purpose.

Except as specifically ruled upon above, no opinion is expressed or implied concerning the tax consequences of the facts described above. Specifically, no opinion is expressed or implied on (1) whether any item of depreciable property placed in service by Taxpayer in the taxable year ended A is eligible for the additional first year depreciation deduction, or (2) if any item of such property is eligible for the additional first year depreciation deduction, whether that item is qualified property as defined in section 168(k)(2) or 50-percent bonus depreciation property as defined in section 168(k)(4)(B).

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, we are sending a copy of this letter to Taxpayer's authorized representatives. We are also sending a copy of this letter to the SB/SE Official.

Sincerely,

KATHLEEN REED

Kathleen Reed
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
6110 copy
copy for amended return