Internal Revenue Service

Number: **201552004**
Release Date: 12/24/2015

Index Number: 9100.04-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

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Refer Reply To:
CC:ITA:B07
PLR-110841-15

Date:
September 22, 2015

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

Legend

Taxpayer =

Owner 1 =

Owner 2 =

New Owner =

Company 1 =

Company 2 =

Company 3 =

Company 4 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

A =

B =

C =

D =

E =

F =

G =

H =

I =

J =

K =

L =

Dear :

This letter ruling responds to a letter dated March 26, 2015, 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 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 by Taxpayer during the taxable year ended Date 1 (the A taxable year).

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is a limited liability company. Taxpayer is in the business of B. For federal income tax purposes, Taxpayer is treated as a partnership and, for the relevant period, Owner 1 and Owner 2 are treated as its partners. On Date 2, New Owner, a limited liability company that is treated as a partnership for federal income tax purposes, acquired all of the outstanding member interests of Taxpayer. Taxpayer uses the accrual method of accounting for federal income tax purposes and in maintaining its books and records and has a C year end.

Owner 1 is a limited liability company that is treated as a partnership for federal income tax purposes. Owner 2 and Company 1 are treated as its partners. Owner 2 is a corporation that is a member of an affiliated group headed by Company 3. This affiliated group has elected to join in the filing of consolidated federal income tax returns. Company 4 is a foreign corporation that, directly and indirectly through its foreign affiliates, owns 100 percent of Company 3.

Company 2 is a limited liability company. Company 2 is wholly owned by Owner 2 and is an entity that is disregarded as separate from its owner for federal income tax purposes.

Taxpayer timely filed its federal tax return on Form 1065, *U.S. Return of Partnership Income*, for its taxable year ended Date 1, on Date 3 ("Taxpayer's A Return"). During it's A taxable year, Taxpayer placed in service qualified property (as defined in § 168(k)(2)) with a total cost of $D, all of which was E-year property (the "Taxpayer Projects Property"). On Taxpayer's A Return, Taxpayer claimed additional first year depreciation with respect to such property of $F.

Owner 1 has leased all of the Taxpayer Projects Property since it was placed in service by Taxpayer pursuant to the G dated Date 4 (the "Master Lease"). In addition to the Master Lease, Taxpayer is a party to the H dated Date 4 (the "Owner Operating Agreement"), and Owner 1 is a party to the I dated Date 4 (the "Tenant Operating Agreement").

Schedule E to the Tenant Operating Agreement, entitled "J" (the "Projections") are financial projections relating to the Taxpayer Projects Property and show that Taxpayer is not to claim additional first year depreciation with respect to the property placed in service during it's A taxable year. The Projections reflect the intent of the partners of Taxpayer (Owner 1 and Owner 2) that additional first year depreciation not be claimed with respect to property placed in service by Taxpayer during it's A taxable year. This intent is evidenced by Article 4.01(b)(xix) of the Owner Operating Agreement, in which Company 2 represents that the Projections have been prepared in good faith, and were based upon all material matters actually known to Company 2 and assumptions believed to be reasonable at the time of such preparation.

Taxpayer's A Return was prepared by K. K is a L tax practitioner and the Vice President of Taxation for Company 4. Neither K nor any other member of Company 4's tax department was involved in negotiating or preparing the Owner Operating Agreement or the Tenant Operating Agreement, including any schedules attached thereto. In addition, neither K nor any other member of Company 4's tax department reviewed these agreements and attached schedules prior to the preparation of the Taxpayer's A Return.

Subsequent to the filing of Taxpayer's A Return, K received and reviewed Schedule E to the Tenant Operating Agreement and determined that such return should have been prepared with no additional first year depreciation claimed and with the appropriate election to not claim additional first year depreciation attached.

Prior to the acquisition of Owner's 1 and Owner's 2 member interests in Taxpayer by New Owner, Taxpayer did not dispose of any qualified property for which they had claimed additional first year depreciation on its Form 1065 for the A taxable year.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 to make the election under § 168(k)(2)(D)(iii) not to deduct the additional first year depreciation under § 168(k) for all classes of property placed in service during the A taxable year that qualify for the additional first year depreciation deduction.

LAW AND ANALYSIS

Section 168(k)(1) provides a 50-percent additional first year depreciation deduction for the placed-in-service year for qualified property (i) acquired by a taxpayer after December 31, 2007, and before September 9, 2010, or acquired by a taxpayer generally after December 31, 2011, and before January 1, 2015, and (ii) placed in service by the taxpayer before September 9, 2010, or after December 31, 2011 (or December 31, 2012, for qualified property described in § 168(k)(2)(B) or (C)), and before January 1, 2015 (or January 1, 2016, for qualified property described in § 168(k)(2)(B) or (C)).

Section 168(k)(5) provides a 100-percent additional first year depreciation deduction for the placed-in-service year for qualified property acquired by a taxpayer after September 8, 2010, and generally before January 1, 2012, and placed in service by the taxpayer after September 8, 2010, and before January 1, 2012 (or January 1, 2013, for qualified property described in § 168(k)(2)(B) or (C)). See section 3 of Rev. Proc. 2011-26, 2011-16 I.R.B. 664, 665.

Section 168(k)(2)(D)(iii) 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. The term "class of property" is defined in § 1.168(k)-1(e)(2) of the Income Tax Regulations as meaning, in general, each class of property described in § 168(e) (for example, 5-year property). See section 5.01 of Rev. Proc. 2008-54, 2008-2 C.B. 722, and section 3.01 of Rev. Proc. 2011-26, 2011-16 I.R.B. at 665 (rules similar to the rules in § 1.168(k)-1 for "qualified property" or for "30-percent additional first year depreciation deduction" apply for purposes of § 168(k) as currently in effect).

Section 1.168(k)-1(e)(1) provides that the election not to deduct additional first year depreciation for a class of property applies to all qualified property that is in that class of property and placed in service in the same taxable year.

Section 1.168(k)-1(e)(3)(i) 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 property is placed in service by the taxpayer.

Section 1.168(k)-1(e)(3)(ii) 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 A 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 (including extensions) 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 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 60 calendar days from the date of this letter to make the election not to deduct the additional first year depreciation under § 168(k) for all classes of property placed in service during the A taxable year that qualify for the additional first year depreciation deduction. This election must be made by Taxpayer filing an amended Form 1065 for the A 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 during the A taxable year is eligible for the additional first year depreciation deduction.

In accordance with the power of attorney, we are sending a copy of this letter to Taxpayer's authorized representative. We are also sending a copy of this letter to the appropriate LB&I Director.

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.

Sincerely yours,

KATHLEEN REED

KATHLEEN REED
Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures (2):
copy of this letter
copy for section 6110 purposes