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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B07
PLR-125728-17

Date:
February 05, 2018

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

Legend

Taxpayer =

P1 =

P2 =

S1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

A =
B =

C =

D =

E =

F =

Dear :

This letter responds to a letter dated August 18, 2017, and subsequent correspondence, submitted by Taxpayer, requesting an extension of time pursuant to § 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 in the taxable year beginning Date 1 and ending Date 2 (the A taxable year).

All references in this letter ruling to § 168(k) are treated as a reference to § 168(k) as in effect after amendment by § 143(b) of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), enacted as part of the Consolidated Appropriations Act, 2016, Division Q, Pub. L. 114-113, 129 Stat. 2242 (December 18, 2015), for qualified property placed in service by Taxpayer after 2015. The amendments made to § 168(k) by § 143(b) of the PATH Act generally are effective for property placed in service after December 31, 2015. *See* § 143(b)(7)(A) of the PATH Act.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is in the business of F. For federal income tax purposes, Taxpayer is treated as a partnership and, for the relevant period, P1 and P2 are treated as its partners. Taxpayer uses the accrual method of accounting for federal income tax purposes and has a C fiscal year end. The period of limitation on assessment under § 6501(a) for the A taxable year has not expired as of the date of this letter.

On Date 3, P1, a domestic corporation with a calendar year end, formed Taxpayer as a B single-member limited liability company that was disregarded for U.S. federal tax purposes. On Date 4, P1 formed S1, as a B single-member limited liability company that was disregarded for U.S. federal tax purposes. Subsequent to forming

S1, P1 contributed 100% of the Taxpayer membership interests to S1. On Date 1, P2, a domestic corporation with a C fiscal year end, acquired D percent of the membership interests in Taxpayer, and Taxpayer converted to a partnership for U.S. federal tax purposes. P1, through its ownership in S1, is the tax matters member of Taxpayer.

Taxpayer placed in service qualified property (as defined in § 168(k)(2)) during its initial taxable year beginning Date 1 and ending Date 2. Taxpayer intended to make an election under § 168(k)(7) to forego additional first year depreciation on all classes of qualified property placed in service during Taxpayer's taxable year ended Date 2 ("the Election").

The intention to make the Election was consistent with the understanding of the partners, as evidenced by the requirement under the executed Taxpayer Amended and Restated Limited Liability Company Agreement, dated as of Date 1 ("Partnership Agreement"). Specifically, Section 8.2(e) of the Partnership Agreement provides that Taxpayer "shall make" the election "to elect out of any and all "bonus depreciation" otherwise available in respect of the Project under Section 168(k) of the Code." As required under the Partnership Agreement, Taxpayer did not claim the additional first year depreciation deduction in modeling its Base Case Model ("BCM"). The BCM was completed by P1 on behalf of Taxpayer, and the BCM was subsequently reviewed by Taxpayer's tax advisors, E, prior to Date 2.

Taxpayer's federal tax return, Form 1065, *U.S. Return of Partnership Income*, for its A taxable year, without extensions, was due on Date 5. On Date 6, during the preparation and review of Taxpayer's A Form 1065, E discovered that the Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, had inadvertently not been filed. As a result, Taxpayer did not timely file its A Form 1065, and did not timely make the Election for its tax year ended Date 2. At the time when the extension was due, Taxpayer was in the process of engaging E to prepare the Form 1065 for its taxable year ending Date 2, including the Form 7004.

On Date 7, E notified P1 about the missed extension which resulted in the late filing of Taxpayer's A Form 1065 and the Election. Taxpayer consulted with E regarding potential remedies for making a late § 168(k)(7) election and E advised Taxpayer to file this request for relief under Treas. Reg. § 301.9100-3.

As required by Section 8.1 of the Partnership Agreement, on Date 8, E provided to Taxpayer draft estimates of income, expense and tax credits to be reported on the A Schedule K-1s, *Partner's Share of Income, Deductions, Credits, etc.*, for distribution to Taxpayer's partners in order for the partners to review the allocations and to assist them as they calculated their extension and estimated taxes. The draft estimates of income and expense were prepared on the basis that Taxpayer would make the Election.

Subsequent to the filing of this request, on Date 9, Taxpayer filed its not timely filed Form 1065 for its taxable year ended Date 2. For the qualified property placed in service in its fiscal year ended Date 2, Taxpayer did not claim the additional first-year depreciation deduction, and claimed the depreciation on the qualified property under the applicable MACRS depreciation method, recovery period, and convention. Further, Taxpayer included an 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 on its not timely filed Form 1065.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 to make the election under § 168(k)(7) not to deduct the additional first year depreciation under § 168(k) for all classes of qualified property placed in service in the taxable year beginning Date 1 and ending Date 2.

LAW AND ANALYSIS

Section 168(k)(1) allows, in the taxable year that qualified property is placed in service, a 50-percent additional first year depreciation deduction for qualified property placed in service by the taxpayer before January 1, 2020 (or January 1, 2021, for qualified property described in §§ 168(k)(2)(B) or 168(k)(2)(C)).

Section 168(k)(7) allows a taxpayer to elect not to deduct the additional first year depreciation for any class of property placed in service by the taxpayer during the taxable year.

Section 4.04 of Rev. Proc. 2017-33, 2017-19 I.R.B. 1236, 1240, provides guidance regarding the election under § 168(k)(7) not to deduct the additional first year depreciation (the § 168(k)(7) election). Section 4.04(1) of Rev. Proc. 2017-33 provides that the rules for making the § 168(k)(7) election are similar to the rules for making the election under § 168(k)(2)(D)(iii) as in effect before the enactment of the PATH Act. As a result, 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 4.04(2) of Rev. Proc. 2017-33 provides that generally rules similar to the rules in § 1.168(k)-1(e)(2), (3), (5) and (7) apply for purposes of § 168(k)(7).

Under § 301.9100-1, 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 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 an extension to make the election not to deduct the additional first year depreciation under § 168(k) for all classes of qualified property placed in service in the taxable year beginning Date 1 and ending Date 2, that qualify for the additional first year depreciation deduction. In this regard, we will consider this election made by Taxpayer on its not timely filed Form 1065 for its taxable year ended Date 2, filed on Date 9, to be timely made.

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 A taxable year is eligible for the additional first year depreciation deduction.

Further, this letter ruling does not grant any extension of time for filing Taxpayer's Form 1065 for the taxable year ending on Date 2.

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 rulings, 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, we are sending a copy of this letter ruling to Taxpayer's authorized representative. We also are sending a copy of this letter ruling to the appropriate operating division director.

Sincerely yours,

DEENA DEVEREUX

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

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