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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

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Refer Reply To:
CC:ITA:7
PLR-102757-18

Date:
June 22, 2018

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

Legend

TP1	=
TP2	=
Year1	=
Date1	=
Firm	=
$a	=

Dear :

This letter ruling responds to a letter dated December 29, 2017, and supplemental correspondence, submitted by TP1 and TP2, requesting an extension of time to make the election under § 168(k)(2)(D)(iii) of the Internal Revenue Code not to deduct the additional first year depreciation under § 168(k)(1) for certain qualified property placed in service by TP1 and TP2 during the taxable year ended Date1 (the "Year1 taxable year"). This request is made pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

All references in this letter ruling to § 168(k) are treated as a reference to § 168(k) as in effect prior to amendment by § 143(b) of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), enacted as Division Q of the Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, 129 Stat. 2242 (Dec. 18, 2015).

FACTS

TP1 and TP2 represent that the facts are as follows:

TP1 and TP2 are partnerships for federal income tax purposes. TP1 and TP2 acquire real property to rehabilitate and lease primarily as office, retail, and residential space. TP1 and TP2 file their federal tax returns on a calendar year basis.

During the Year1 taxable year, TP1 and TP2 placed in service several items of real and personal property that are qualified property (as defined in § 168(k)(2) before the application of § 168(k)(2)(D)(iii)). Such property included qualified leasehold improvement property (as defined in § 168(e)(6)).

Firm was engaged to prepare TP1's and TP2's federal tax returns for the Year1 taxable year. For such returns, TP1 and TP2 advised Firm that the additional first year depreciation deduction is not to be claimed for property for which a rehabilitation credit under § 47 was being claimed and that the election not to deduct the additional first year depreciation is to be made for such property. TP1 and TP2 claimed rehabilitation credits for their qualified leasehold improvement property placed in service during the Year1 taxable year.

TP1 and TP2 timely filed their federal tax returns for the taxable year ending Date1. On such returns, TP1 and TP2 did not deduct the additional first year depreciation for any qualified leasehold improvement property placed in service during that taxable year, but did deduct depreciation for such property under the general depreciation system of § 168(a) by using the straight-line method of depreciation, a 15-year recovery period, and the half-year convention. However, due to an inadvertent error made by Firm, these returns included elections under §168(f)(1) to not apply §168 for qualified leasehold improvement property rather than elections under §168(k)(2)(D)(iii) not to claim the additional first year depreciation under §168(k) for such property.

With respect to TP1, the § 168(f) election statement to exclude its qualified leasehold improvement property from § 168 indicated that the depreciable basis of the property subject to such election is zero. With respect to TP2, the § 168(f) election statement to exclude its qualified leasehold improvement property from § 168 indicated that the depreciable basis of the property subject to such election is $a. However, TP2's Form 4562, "Depreciation and Amortization," for the Year1 taxable year shows that TP2 depreciated qualified leasehold improvement property with a cost of $a under

the general depreciation system of § 168(a) by using the straight-line method of depreciation, a 15-year recovery period, and the half-year convention. Subsequently, TP2 filed an amended federal tax return for the Year1 taxable year to remove the mistakenly filed § 168(f) election statement.

RULING REQUESTED

TP1 and TP2 request an extension of time to make the election under § 168(k)(2)(D)(iii) not to deduct the additional first year depreciation under § 168(k)(1) with respect to any qualified leasehold improvement property placed in service during the taxable year ended Date1.

LAW

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 (i) acquired by the taxpayer after December 31, 2007, and before September 9, 2010, or after December 31, 2011 (or after December 31, 2012, for qualified property described in §§ 168(k)(2)(B) or 168(k)(2)(C)) and before January 1, 2016, and (ii) placed in service by the taxpayer before September 9, 2010, or after December 31, 2011 (or after December 31, 2012, for qualified property described in §§ 168(k)(2)(B) or 168(k)(2)(C)) and before January 1, 2016 (or before January 1, 2017, for qualified property described in §§ 168(k)(2)(B) or 168(k)(2)(C)).

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, among other things, qualified leasehold improvement property as defined in § 1.168(k)-1(c) and depreciated under § 168. *See* section 5.01 of Rev. Proc. 2008-54, 2008-2 C.B. 722 (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)(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 Year1 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.

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, TP1 and TP2 are 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)(1) for all qualified leasehold improvement property placed in service during the taxable year ended Date1, that qualify for the additional first year depreciation deduction.

Except as specifically set forth above, no opinion is expressed or implied 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 (1) whether any item of depreciable property placed in service by TP1 and TP2 during the taxable year ended Date1, is eligible for the additional first year depreciation deduction, or (2) whether any qualified leasehold improvement property placed in service by TP1 and TP2 during the taxable year ended Date1, is eligible for the rehabilitation credit.

This letter ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that this ruling may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, we are sending copies of this letter ruling to TP1's and TP2's authorized representatives. We are also sending a copy of this letter ruling to the appropriate operating division director.

Sincerely,

Kathleen Reed

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

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