Internal Revenue Service

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Department of the Treasury
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Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
CC:ITA:B07
PLR-127810-18

Date:
April 19, 2019

LEGEND:

Taxpayer	=
X	=
Y	=
Z	=
State	=
Taxable Year	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
Firm	=

Dear :

This letter ruling responds to a letter dated September 10, 2018, submitted by your representative on behalf of 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 in the Taxable Year.

All references in this letter to § 168(k) are treated as a reference to § 168(k) as in effect: (i) prior to amendment by § 13201 of the Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (December 22, 2017) (TCJA), and 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 property placed in service after December 31, 2015. See § 143(b)(7)(A) of the PATH Act; and (ii) after amendment by § 13201 of the TCJA for property acquired and placed in service after September 27, 2017. See § 13201(h)(1) of the TCJA.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is a limited liability company that is treated as a partnership for federal income tax purposes. Members of Taxpayer are X, Y, and Z. X is Taxpayer's managing member and Tax Matters Partner. Taxpayer is an electric utility company that owns and operates the electric transmission system in State. Taxpayer uses an accrual method of accounting.

Taxpayer timely filed its Federal tax return extension applications and its Federal tax returns for every taxable year since its formation through its taxable year ended Date 1. For all such tax returns other than the taxable year ended Date 2, Taxpayer made the election not to deduct the additional first year depreciation under § 168(k).

For the Taxable Year, Taxpayer engaged Firm to prepare its Form 1065, U.S. Return of Partnership Income. On Date 3, Taxpayer and X each issued its own financial statements, which reflected an election not to deduct additional first year depreciation under § 168(k).

On Date 4, Firm confirmed with Taxpayer that Taxpayer wanted to make an election not to deduct the additional first year depreciation under § 168(k) for all classes of property placed in service during the Taxable Year.

On Date 5, Firm provided to Taxpayer a draft Schedule K-1 for Y. The draft Schedule K-1 reflected the agreed election not to deduct additional first year depreciation under § 168(k).

On Date 6, Firm sent to Taxpayer a filing copy of Form 1065 that properly reflected the election not to deduct the additional first year depreciation.

Due to an inadvertent error, Taxpayer did not timely file Taxpayer's Form 1065 including the election statements by the due date, Date 7. The return was instead filed late on

Date 8, the day the inadvertent error was discovered. Because Taxpayer did not timely file its federal tax return for the Taxable Year, Taxpayer failed to make the election not to deduct additional first year depreciation under § 168(k)(7).

Neither Taxpayer nor any members of Taxpayer has made the election under § 168(k)(4) to accelerate alternative minimum tax credits in lieu of the additional first year depreciation deduction.

RULING REQUESTED

Accordingly, Taxpayer requests 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) for all classes of qualified property placed in service by Taxpayer in the Taxable Year.

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 out of additional first year depreciation for any class of property placed in service 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 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 rules generally similar to the rules in § 1.168(k)-1(e)(2), (3), (5) and (7) of the Income Tax Regulations apply for purposes of § 168(k)(7).

Section 1.168(k)-1(e)(2) defines the term “class of property” as meaning, among other things, each class of property described in § 168(e) (for example, 5-year property). As a result of the amendments to § 168(k) by § 143(b) of the PATH Act, the term “class of property” also includes qualified improvement property as defined in § 168(k)(3) and depreciated under § 168.

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 a taxable year beginning in 2016 provide 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.

Section 1.168(k)-1(e)(7)(i) provides that an election not to deduct the additional first year depreciation for a class of property that is qualified property, once made, may be revoked only with the written consent of the Commissioner of Internal Revenue. To seek the Commissioner's consent, the taxpayer must submit a request for a letter ruling.

Under § 301.9100-1(a), 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 rules for requesting extensions of time for regulatory 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 that granting relief will not prejudice the interests of the Government.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Taxpayer is granted an extension of time to make the election not to deduct the additional first year depreciation under § 168(k) for all classes of qualified property placed in service during the Taxable Year. In this regard, we will consider the election made by Taxpayer on Taxpayer’s federal income tax return for the Taxable Year filed on Date 8 to be timely made.

Except as specifically ruled upon above, no opinion is expressed or implied concerning the 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 Taxpayer in the Taxable Year, is eligible for the 50-percent or 100-percent, as applicable, additional first year depreciation deduction under § 168(k) or (2) whether Taxpayer's classification of any item of depreciable property under § 168(e) or Rev. Proc. 87-56, 1987-2 C.B. 674, is correct.

Further, this letter ruling does not grant an extension of time for filing Taxpayer's federal income tax return for the Taxable Year.

The rulings contained in this letter are based upon information and representations submitted by the 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.

We are sending a copy of this letter to the appropriate operating division director.

Sincerely,

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