**Internal Revenue Service**

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:7
PLR-101869-19

Date:
August 12, 2019

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

Legend

Taxpayer =
Firm =
A =

B =

C =
D =
E =
F =
Year1 =
Year2 =
Date1 =

Dear :

This letter responds to a letter dated January 28, 2019, and subsequent correspondence, submitted by your authorized representative on behalf of Taxpayer requesting the consent of the Commissioner of Internal Revenue (Commissioner) to revoke Taxpayer's election under § 168(k) of the Internal Revenue Code not to deduct the additional first year depreciation for certain qualified property, that was made on its federal tax return for the taxable year ended Date1 (the “Year1 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 the Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017) (TCJA), for property acquired before September 28, 2017,

and placed in service during the Year1 taxable year; and (ii) after amendment by the TCJA for property acquired and placed in service after September 27, 2017.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer, an S Corporation, files a Form 1120S, U.S. Income Tax Return for an S Corporation, that includes its A. Taxpayer files its federal tax return on a calendar year basis and uses an accrual method of accounting. Taxpayer is principally engaged in B.

Taxpayer maintains a C that are rented by the E of Taxpayer and its A on a daily basis, are for the exclusive use of the E of Taxpayer and its A, and are not available for use as F. The D comprise the majority of Taxpayer's 5-year property that is placed in service each year. Taxpayer typically disposes of the D prior to the end of their depreciable lives.

Taxpayer has relied on Firm to provide tax and business advice and to prepare its tax returns for many years. Taxpayer has historically elected out of the additional first year depreciation under § 168(k) for all 5-year property in order to reduce the amount of depreciation that would be recaptured upon disposition.

During Year1, Taxpayer placed in service 5-year property that is qualified property under § 168(k). While preparing the Form 1120S for Taxpayer for the Year1 taxable year, Firm held various discussions with senior level management of Taxpayer about the tax effects of TCJA. However, there were no discussions about the additional first year depreciation deduction under § 168(k) or the tax effects of the election not claim this deduction under § 168(k)(7).

For Taxpayer's Form 1120S for the Year1 taxable year, Firm prepared the election under § 168(k)(7) not to claim the additional first year depreciation deduction for all 5-year property that Taxpayer placed in service during Year1. Taxpayer timely filed the Form 1120S for the Year1 taxable year, which included the election statement not to claim the additional first year depreciation deduction for 5-year property placed in service by Taxpayer.

In Year2, as part of a fee proposal process, another firm reviewed Taxpayer's Year1 Form 1120S after it was filed. During the review process, the firm brought to Taxpayer's attention that permanent tax savings for Taxpayer's shareholders were available by not making the election under § 168(k)(7), due to the reduction of Taxpayer's shareholders' effective tax rates. Had Taxpayer known of potential permanent tax savings available to its shareholders by claiming additional first year depreciation for all qualified property placed in service in Year1, Taxpayer would not

have made the election under § 168(k)(7) not to deduct the additional first year depreciation for any class of qualified property placed in service by Taxpayer in Year1.

## RULING REQUESTED

Taxpayer requests consent to revoke its election under § 168(k)(7) not to deduct the additional first year depreciation for all 5-year property that is qualified property under § 168(k) and placed in service by Taxpayer during the taxable year ended Date1.

## LAW AND ANALYSIS

Prior to amendment by the TCJA, §168(k)(1) allowed, 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 before January 1, 2021, for qualified property described in § 168(k)(2)(B) or (C)).

As amended by the TCJA, § 168(k)(1) and (6) allow, in the taxable year that qualified property is placed in service, a 100-percent additional first year depreciation deduction for qualified property acquired by the taxpayer after September 27, 2017, and placed in service by the taxpayer after September 27, 2017, and before January 1, 2023 (or before January 1, 2024 for qualified property described in § 168(k)(2)(B) or (C)).

Section 168(k)(7) provides that a taxpayer may make an election not to deduct the additional first year depreciation for any class of property placed in service during the taxable year ("the "§ 168(k) election") and an election under § 168(k)(7) may be revoked only with the consent of the Secretary.

Section 5.01 of Rev. Proc. 2019-33, 2019-34 I.R.B. 662, provides that 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. For purposes of § 168(k) as amended by the TCJA, section 5.01 of Rev. Proc. 2019-33 also defines the term "class of property" as meaning, among other things, each class of property described in § 168(e)(5) (for example, 5-year property).

These rules in section 5.01 of Rev. Proc. 2019-33 are similar to the rules in section 4.04 of Rev. Proc. 2017-33, 2017-19 I.R.B. 1236, for making the § 168(k)(7) election before the TCJA. Section 4.04(2) of Rev. Proc. 2017-33 provides that, in general, rules similar to the rules in § 1.168(k)-1(e)(2), (3), (5), and (7) 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).

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.

## CONCLUSION

Based solely on the facts and representations submitted, we conclude that a revocation of Taxpayer's election not to deduct any additional first year depreciation under § 168(k)(1) for 5-year property placed in service by Taxpayer in the taxable year ended Date1, is permitted under § 1.168(k)-1(e)(7)(i). Accordingly, Taxpayer is granted 60 calendar days from the date of this letter to revoke such election. The revocation must be made in a written statement that is filed with Taxpayer's amended Form 1120S for the taxable year ended Date1.

A copy of this letter ruling must be attached to such amended return. A copy is enclosed for that purpose. Alternatively, a taxpayer filing its federal tax return electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of the letter ruling.

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 ended Date1, is eligible for the 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, no opinion is expressed or implied concerning the tax consequences of the use of the D by Taxpayer's A.

Moreover, this letter ruling only applies to Taxpayer and does not apply to any depreciable property placed in service by Taxpayer's A during the taxable year ended Date1.

In accordance with the power of attorney, we are sending a copy of this letter ruling to Taxpayer's authorized representatives. We are also sending a copy of this letter ruling to the appropriate operating division official.

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,

Kathleen Reed

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

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

cc: