

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201548008**
Release Date: 11/27/2015
Index Number: 9100.04-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:7
PLR-107078-15
Date:
August 24, 2015

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

Legend

Taxpayer	=	
Date1	=	
Date2	=	
Date3	=	
Date4	=	
Date5	=	
Year1	=	

Dear :

This letter responds to a letter dated January 20, 2015, and supplemental correspondence, submitted by Taxpayer, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the election under § 168(k)(2)(D)(iii) of the Internal Revenue Code not to deduct the additional first year depreciation deduction under § 168(k)(1) for all qualified leasehold improvement property placed in service in the taxable year ended Date1 (the Year1 taxable year).

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is a limited liability company classified as a partnership for Federal income tax purposes. Taxpayer uses an overall accrual method of accounting and files its Federal income tax return on a calendar-year basis. Taxpayer is engaged in leasing office and retail space to tenants.

Taxpayer timely filed Form 1065, *U.S. Return of Partnership Income*, on or around Date2, for the Year1 taxable year. On the Form 4562, *Depreciation and Amortization (Including Information on Listed Property)*, attached to that return, Taxpayer reported that it placed in service both 7-year property and nonresidential real property, and claimed the additional first year depreciation deduction for 7-year property that is qualified property.

Taxpayer subsequently discovered that certain property reported as nonresidential real property on Taxpayer's Year1 Form 1065, and placed in service in Year1, should have been classified as qualified leasehold improvement property. On Date3, Taxpayer filed a Form 3115, *Application for Change in Method of Accounting*, to change the classification of this property from nonresidential real property to qualified leasehold improvement property, beginning with the taxable year beginning on Date4. By letter dated on the same date of this letter ruling, we granted consent to Taxpayer to make this change in method of accounting in accordance with the terms and conditions of that letter and Rev. Proc. 2015-13, 2015-5 I.R.B. 419.

The period of limitations on assessment expires for Taxpayer's Year1 taxable year on or around Date5. Taxpayer did not make the election under § 168(k)(4) to accelerate alternative minimum tax credits (and, if applicable, research credits) in lieu of the additional first year depreciation deduction for any class of property placed in service for any taxable year.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to § 301.9100-3 to make the election under § 168(k)(2)(D)(iii) not to deduct the additional first year depreciation provided under § 168(k)(1) for qualified leasehold improvement property that is qualified property and placed in service in the taxable year ended Date1.

LAW AND ANALYSIS

Section 168(k)(1) allows a 50-percent additional first year depreciation deduction in the placed-in-service year for qualified property acquired by a taxpayer after December 31, 2007, and before September 9, 2010, or acquired by a taxpayer generally after December 31, 2011, and 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 generally before January 1, 2015.

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, among other things, qualified leasehold improvement property as defined in § 1.168(k)-1(c) and depreciated under § 168. Section 1.168(k)-1(e)(2)(iv). 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)(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 taxable year ended Date1, 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 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 § 301.9100-3 have been satisfied. Accordingly, Taxpayer is granted 60 calendar days from the date of this letter or, if earlier, until the date on which the period of limitations on assessment for Taxpayer's Year1 taxable year expires, to make the election not to deduct the additional first year depreciation under § 168(k)(1) for qualified leasehold improvement property placed in service by Taxpayer during the taxable year ended Date1, that qualify for the additional first year depreciation deduction. This election must be made by Taxpayer filing an amended federal tax income tax return for such taxable year, with a statement indicating that Taxpayer is electing not to deduct the additional first year depreciation for all qualified leasehold improvement property that is qualified property and placed in service during that taxable year.

Except as specifically set forth above, we express no opinion 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 whether any item of depreciable property placed in service by Taxpayer during the taxable year ended Date1, is eligible for the additional first year depreciation deduction or whether the items of property classified by Taxpayer are qualified leasehold improvement property as defined in §§ 168(e)(6), 168(k)(3), and 1.168(k)-1(c).

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 copies of this letter to Taxpayer's authorized representatives.

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 § 6110 purposes