

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:ITA:B5-PLR-150421-02

Date:

January 7, 2003

Re: Letter Ruling Requesting an Extension of Time to File an Election Under Section 168(h)(6)(F)(ii) of the Internal Revenue Code

LEGEND:

Taxpayer =

Parent =

Dear :

This is in response to your letter of , requesting, on behalf of the above-named taxpayer, an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election under section 168(h)(6)(F)(ii) of the Internal Revenue Code (the "Election"). The material information submitted for consideration is summarized below.

Taxpayer is a for-profit corporation. Taxpayer is a wholly owned subsidiary of Parent. Parent is a non-profit corporation and a tax-exempt entity under section 501(c).

As a wholly owned subsidiary of Parent, Taxpayer is a tax-exempt controlled entity within the meaning of section 168(h)(6)(F)(iii). Under section 168(h)(6)(F)(ii), Taxpayer may elect not to be treated as a tax-exempt controlled entity for purposes of section 168(h)(6).

Parent's controller was advised, by representatives of the outside accounting firm auditing Parent's year ended June 30, 2001, of the need to file a federal income tax return for Taxpayer for the year ended December 31, 2001. Based upon the information submitted, Taxpayer intended to make an election under 168(h)(6)(f)(ii) on a timely filed federal income tax return for its first tax year ended December 31, 2001. Subsequent to meeting with representatives of Parent's accounting firm, Parent's controller became seriously ill and terminated her employment with Parent. There was

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some delay in hiring a new controller. Consequently, the new controller did not become aware of Taxpayer's failure to timely file a federal income tax return for the year ended December 31, 2001, and make an election under section 168(h)(6)(f)(ii) until after Taxpayer's first return was due. The Taxpayer is seeking relief under section 301.9100-1 and 301.9100-3 of the regulations for failure to make a timely election.

Section 168(h)(6)(A) provides that, for purposes of section 168(h), if (1) any property which is not tax-exempt use property is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, and (2) any allocation to the tax-exempt entity of partnership items is not a qualified allocation, then an amount equal to such tax-exempt entity's proportionate share of such property shall be treated as tax-exempt use property.

Section 168(h)(6)(F)(i) provides that, for purposes of section 168(h)(6), any tax-exempt controlled entity shall be treated as a tax-exempt entity.

Section 168(h)(6)(F)(ii) provides that, for purposes of section 168(h)(6), a tax-exempt controlled entity may elect not to be treated as a tax-exempt entity. Such an election is irrevocable and will bind all tax-exempt entities holding an interest in the tax-exempt controlled entity.

Section 301.9100-7T(a)(2)(i) requires elections under section 168(h)(6)(F)(ii) to be made by the due date of the tax return for the first taxable year for which the election is to be effective. Therefore, the Election is a regulatory election under section 301.9100-1(b).

Under section 301.9100-1(c) and section 301.9100-3(a), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election under all subtitles of the Internal Revenue Code, except subtitles E, G, H, and I, provided that the taxpayer demonstrates 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.

Based on the facts and information submitted, including the affidavits submitted and representations that have been made, we conclude that Taxpayer acted reasonably and in good faith and granting relief will not prejudice the interests of the government. Accordingly, the requirements of the regulations for granting relief in this case have been satisfied and we grant an extension of time, until 30 days from the date of issuance of this letter, for Taxpayer to file the Election.

Taxpayer must file an amended federal income tax return for its tax year ending on December 31, 2001, and attach thereto the Election and information set forth in section 301.9100-7T(a)(3). Taxpayer should also attach a copy of this letter to the

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amended return. In addition, pursuant to section 301.9100-7T(a)(3)(ii), a copy of the Election statement should also be attached to the federal income tax returns of each of the tax-exempt shareholders or beneficiaries of Taxpayer.

We express no opinion as to the tax consequences for filing the Election late under provisions of any other sections of the Internal Revenue Code and regulations thereunder, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Election late that are not specifically set forth in the above ruling. For purposes of granting this relief, we relied on certain statements and representations made by the taxpayer. Verification of the factual information, representations, and other data may be required as part of an examination. Moreover, notwithstanding that an extension is granted to file the Election, any penalties and interest that would otherwise be applicable continue to apply.

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

Pursuant to the power of attorney on file in this office, we are sending a copy of this letter to the taxpayer's authorized representative.

Sincerely,

/s/ J. Charles Strickland

J. Charles Strickland
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Income Tax and Accounting)

Enclosures (2):

Copy of this letter

Copy for section 6110 purposes