**Internal Revenue Service**

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B05
PLR-135733-10

Date:
February 04, 2011

Legend:

Taxpayer =

Authority =

Partnership =
LLC =
Tax Year =
Property =
A =
B =
CPA =
Date 1 =
Date 2 =
Date 3 =

Dear :

This is in response to your letter of August 30, 2010, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Regulations on Procedure and Administration for Taxpayer to file an election under § 168(h)(6)(F)(ii) of the Internal Revenue Code.

FACTS

Taxpayer is wholly-owned by Authority, a tax-exempt entity. Taxpayer is a member of Partnership, a limited liability company. Taxpayer owns A percent of Partnership. LLC, an unrelated party, owns the remaining B percent of Partnership. Partnership was formed to acquire, rehabilitate, and renovate Property, a historic building. The

submission represents that expenditures relating to the project to rehabilitate and renovate Property are “qualified rehabilitation expenditures” within the meaning of the historic rehabilitation tax credit under § 47.

In order for the partners of Partnership to claim the historic rehabilitation tax credit for certain expenditures, Property cannot be “tax-exempt use property” under § 168(h). Since Taxpayer is wholly-owned by Authority, Taxpayer is a “tax-exempt controlled entity” within the meaning of § 168(h)(6)(F)(iii) and a portion of Property is “tax-exempt use property.” Taxpayer may elect, under §168(h)(6)(F)(ii), not to be treated as a tax-exempt entity for purposes of § 168(h)(6). This election must comply with the requirements of § 301.9100-7T of the temporary Regulations on Procedure and Administration.

Taxpayer intended to file the § 168(h)(6)(F)(ii) election for Tax Year and for all taxable years thereafter. On Date 1, an attorney for Taxpayer sent instructions to Authority requesting that Authority confirm that CPA was aware of the requirement to file the election and would file the election. On Date 2, CPA e-mailed Authority and its attorneys a confirmation that CPA will make the irrevocable elections under § 168(h)(6)(F)(ii) for Taxpayer and certain other relevant entities for their tax years starting in Tax Year. Taxpayer’s election, dated Date 3, was forwarded to CPA.

Taxpayer’s tax return for Tax Year was filed pursuant to an extension, at which time CPA’s firm could not locate the original file for Taxpayer. CPA’s firm opened a new file for Taxpayer, but overlooked Taxpayer’s election. Due to CPA’s error, Taxpayer’s Tax Year return was filed without the election attached. Subsequently, CPA’s firm located Taxpayer’s original files and recognized that it should have filed the election with the Tax Year return.

Taxpayer is seeking relief under §§ 301.9100-1 and 301.9100-3 to make a late § 168(h)(6)(F)(ii) election.

LAW

Section 168(h)(6)(A) provides that, for purposes of § 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 § 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 § 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 § 168(h)(6)(F)(ii) to be made by the due date of the tax return (including extensions) for the first taxable year for which the election is to be effective.

Under § 301.9100-1(c) and § 301.9100-3(a) and (b), 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 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. Under § 301.9100-3(b)(1)(v), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on all of the facts and information submitted and the representations made, Taxpayer relied on a qualified tax professional to make the election under § 168(h)(6)(F)(ii). That tax professional failed to make a timely election. We therefore conclude that Taxpayer has acted reasonably and in good faith as described in § 301.9100-3(b)(1), and granting the requested relief will not prejudice the interests of the government.

Taxpayer is granted an extension of time of 60 days from the date of this letter ruling to file an amended return for Tax Year making the election under § 168(h)(6)(F)(ii). Taxpayer must attach the aforementioned election and the information set forth in § 301.9100-7T(a)(3) to the amended return. Taxpayer also must attach a copy of this letter to the amended return. Pursuant to § 301.9100-7T(a)(3)(ii), a copy of the election statement also should be attached to the federal income tax returns of each of the tax-exempt shareholders or beneficiaries of Taxpayer.

## CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, we express no opinion as to whether Taxpayer qualifies to make the election set forth in § 168(h)(6)(F)(ii). We express no opinion as to whether any partners of Partnership are entitled to the historic rehabilitation tax credit under § 47.

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

The ruling contained in this letter is based upon information and representations submitted by 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Amy Pfalzgraf
Senior Counsel, Branch 5
Office of Chief Counsel
(Income Tax & Accounting)

Enclosure (1)
Copy for section 6110 purposes