Internal Revenue Service

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Person To Contact:
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Telephone Number:

Refer Reply To:
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Date:
January 09, 2012

Taxpayer	=
State	=
Date	=
City	=
A	=
B	=
C	=
Location	=

Dear :

This letter responds to a letter dated June 22, 2011, and subsequent correspondence, submitted on behalf of Taxpayer requesting a ruling under § 168(g)(4)(G) of the Internal Revenue Code.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is a State limited liability company. Taxpayer was formed on Date, and has two members. Taxpayer's principal place of business is City. It uses the accrual method of accounting and has a fiscal year. A, a State corporation, is the managing member of Taxpayer. The other member of Taxpayer is B, a State corporation. Each of A and B are domestic corporations, neither of which has an election in effect under § 936.

Taxpayer has not elected to be treated as an association taxable as a corporation pursuant to § 301.7701-3(a) of the Income Tax Regulations and, thus, is treated as a partnership for federal income tax purposes. Taxpayer is the sole owner of C, a State limited liability company. The primary business of Taxpayer is to hold the membership interest in C. C has not elected to be treated as an association taxable as a corporation pursuant to § 301.7701-3(a) and, thus, is treated as a disregarded entity for federal income tax purposes. Thus, all of the assets of C are considered owned by Taxpayer for federal income tax purposes.

C is engaged principally in the business of developing a wind project that will be located in Location (the "Project"). The Project will include tangible property that will be subject to a depreciation allowance pursuant to § 168 (the "Depreciable Property"). The Depreciable Property will be used predominantly in Location.

None of the Depreciable Property will be either "tax-exempt use property" or "tax-exempt bond financed property" as such terms are defined in § 168(g). None of the Depreciable Property will be imported property covered by an Executive order under § 168(g)(6). Neither Taxpayer nor C has made an election pursuant to § 168(g)(7) to depreciate any of the Depreciable Property under the alternative depreciation system of § 168(g).

RULING REQUESTED

Taxpayer requests a ruling that the exception under § 168(g)(4)(G) applies to the Depreciable Property to the extent that it is used predominantly in Location.

LAW AND ANALYSIS

Section 168(g)(1)(A) provides that any tangible property used predominantly outside the United States during the taxable year must be determined under the alternative depreciation system of § 168(g).

Section 168(g)(4) lists exceptions to § 168(g)(1)(A) for certain property used outside the United States. Section 168(g)(4)(G) provides that property will not be treated as used predominantly outside the United States if the property is owned by a domestic corporation (other than a corporation which has an election in effect under § 936) or by a United States citizen (other than a citizen entitled to the benefits of § 931 or 933) and which is used predominantly in a possession of the United States by such a corporation or such a citizen, or by a corporation created or organized in, or under the law of, a possession of the United States.

The background of § 168(g)(4) provides insight in determining whether § 168(g)(4)(G) applies to domestic partnerships where all of the partners are domestic corporations (none of which has an election in effect under § 936) or United States

citizens (none of whom is entitled to the benefits of § 931 or 933). The rules in § 168(g)(4) are derived from former § 48(a)(2)(B). Prior to 1990, § 168(g)(4) provided, in relevant part, that for purposes of § 168(g)(4), rules similar to the rules under § 48(a)(2) (including the exceptions contained in § 48(a)(2)(B)) shall apply in determining whether property is used predominantly outside the United States. When former § 48 was repealed as a "deadwood" provision in 1990, § 168(g)(4) was amended to incorporate the enumerated exceptions contained in former § 48(a)(2)(B). See § 11813 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508 (the "Act"). The language of § 168(g)(4)(G) is the same as the language in former § 48(a)(2)(B)(vii) prior to its repeal in 1990.

The Senate Finance Committee stated the following comment, in relevant part, on the reason for the enactment of former § 48(a)(2)(B)(vii):

> "Your committee's amendment extends the application of the investment credit provision to property used in a possession by a U.S. person or by a corporation organized in a possession provided the property would otherwise have qualified for the investment credit. This rule is not extended if the property is owned or used in the possession by U.S. persons who are presently exempt from U.S. tax due to the application of the special provisions of the Code which exempt U.S. persons who derive substantially all of their income from a U.S. possession (sections 931, 932, 933, 934(b))." S. Rep. No. 1707, 89th Cong., 2d Sess. 58 (1966), 1966-2 C.B. 1100.

Based on this Senate Report, it appears that Congress intended former § 48(a)(2)(B)(vii) to apply to United States persons even though the literal language of former § 48(a)(2)(B)(vii) applied to United States citizens or domestic corporations. When former § 48(a)(2)(B)(vii) was enacted in 1966, the term "United States person" was defined under § 7701(a)(30) of the 1954 Code as meaning: (A) a citizen or resident of the United States, (B) a domestic partnership, (C) a domestic corporation, and (D) any estate or trust (other than a foreign estate or foreign trust within the meaning of § 7701(a)(31) of the 1954 Code).

Similar to former § 48(a)(2)(B)(vii), the literal wording of § 168(g)(4)(G) applies to domestic corporations or United States citizens, but not to domestic partnerships. However, the repeal of the "deadwood" provisions and the amendment to § 168(g)(4) by § 11813 of the Act were not intended to be substantive changes in the tax law. H.R. Rep. No. 101-894, 101st Cong., 2d Sess. (Oct. 17, 1990).

Section 7701(a)(30) defines the term "United States person" as: (A) a citizen or resident of the United States, (B) a domestic partnership, (c) a domestic corporation, (D) any estate (other than a foreign estate, within the meaning of § 7701(a)(31)), and (E) any trust if a court within the United States is able to exercise primary supervision over

the administration of the trust, and one or more United States persons have the authority to control all substantial decisions of the trust.

In light of the legislative history of § 168(g)(4) and former § 48(a)(2)(B)(vii), we believe that § 168(g)(4)(G) is intended to apply to a domestic partnership where all of its partners are domestic corporations that do not have an election in effect under § 936 or are United States citizens that are not entitled to the benefits of § 931 or 933.

CONCLUSION

In this case, Taxpayer represents that the Project (which includes the Depreciable Property) will be located in and used predominantly in Location, which is a possession of the United States. Taxpayer also represents that: (1) Taxpayer is a State limited liability company that is treated as a partnership for federal income tax purposes; (2) Taxpayer has two members, A and B, each of which is a domestic corporation; (3) neither A nor B has an election in effect under § 936; (4) Taxpayer is the sole owner of C and C is treated as a disregarded entity for federal income tax purposes; and (5) all assets of C, which includes the Depreciable Property, are considered owned by Taxpayer for federal income tax purposes.

Based solely on Taxpayer's representations and the relevant law and analysis set forth above, we conclude that:

Provided Taxpayer is a domestic partnership where all of its partners are domestic corporations (other than a corporation which has an election in effect under § 936) or are United States citizens that are not entitled to the benefits of § 931 or 933, the Depreciable Property is property described in § 168(g)(4)(G) and, thus, the Depreciable Property will not be treated as property that is used predominantly outside the United States within the meaning of § 168(g)(4).

Except as specifically set forth above, no opinion is expressed or implied concerning the tax consequences of the facts described above under any other provisions of the Code (including subsections of § 168 other than § 168(g)(4)(G)).

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

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
Branch Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax & Accounting)

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