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
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Date:
December 09, 2014

TY:

Legend

Taxpayer =

Parent =

Exempt Organization =

Partnership =

Tax Year =
State =
Affidavit 1 =

Affidavit 2 =
Related Partnership =

Dear :

This letter is in response to a request for a private letter ruling dated May 6, 2013, submitted on your behalf by your authorized representative. Specifically, you have requested an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations for Taxpayer, a tax-exempt controlled entity under § 168(h)(6)(F)(iii) of the Internal Revenue Code, to make an election under § 168(h)(6)(F)(ii) to not be treated as a tax-exempt controlled entity.

FACTS

Taxpayer was formed in Tax Year in State and is taxed as a C corporation for federal income tax purposes. Taxpayer is wholly owned by Parent, which is a tax-exempt entity. Parent and Exempt Organization share common officers. Exempt Organization is a not-for-profit corporation exempt from taxation under § 501(c)(4). Based on Parent's complete ownership interest in, and control of Taxpayer, Taxpayer is a "tax-exempt controlled entity" within the meaning of § 168(h)(6)(F)(iii).

Taxpayer is the general partner of Partnership. Partnership's real property was placed in service in Tax Year, and Taxpayer filed a timely federal income tax return for Tax Year, but failed to make the § 168(h)(6)(F)(ii) election on that return. Taxpayer's failure to make the required § 168(h)(6)(F)(ii) election was discovered for the first time when evidence of such election was requested in the case of Related Partnership, which is owned by Exempt Organization. However, from Affidavit 1, Affidavit 2, and the other materials submitted, it is clear that Taxpayer at all times intended to make the § 168(h)(6)(F)(ii) election to not be treated as a tax-exempt controlled entity. Affidavits 1 and 2 further make it clear that Taxpayer's return preparer was unaware that an affirmative election statement was required to be attached to the Taxpayer's federal tax return for Tax Year. Upon discovering its failure, Taxpayer promptly sought an extension of time in which to file the § 168(h)(6)(F)(ii) election.

Taxpayer makes the following representations. Notwithstanding omitting the statement of the § 168(h)(6)(F)(ii) election from the tax return for Tax Year, every tax return prepared and filed by Taxpayer reflects the same treatment as if the § 168(h)(6)(F)(ii) election had been made. Taxpayer is not under audit nor is being considered by an appeals officer or federal court for any tax year in which the § 168(h)(6)(F)(ii) election should have been made or for any tax year affected by that election. Taxpayer is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662. Taxpayer is not using hindsight in requesting the relief sought. The requested relief will not result in a lower tax liability (in the aggregate for all tax years affected by the § 168(h)(6)(F)(ii) election) than Taxpayer would have had if the § 168(h)(6)(F)(ii) election had been timely made. Finally, although the period of limitations on assessment under § 6501(a) for Tax Year has expired, Taxpayer states its belief that the Government is not prejudiced in this case and thus § 9100 relief should be granted.

LAW

Section 167(a) of the Internal Revenue Code provides generally for a depreciation deduction for property used in a trade or business. Under § 168(g), the alternative depreciation system must be used for any tax-exempt use property as defined in § 168(h).

Section 168(h)(6)(A) provides that, for purposes of § 168(h), if any property which (but for this subparagraph) is not tax-exempt use property is owned by a partnership having both a tax-exempt entity and a nontax-exempt entity as partners and any allocation to the tax-exempt entity is not a qualified allocation, then an amount equal to such tax-exempt entity's proportionate share of such property is treated as tax-exempt use property.

Section 168(h)(6)(F)(i) provides generally that any tax-exempt controlled entity is treated as a tax-exempt entity for purposes of § 168(h)(6). Under § 168(h)(6)(F)(iii)(I), a "tax-exempt controlled entity" means any corporation (without regard to that subparagraph and § 168(h)(2)(E)) if 50 percent or more (in value) of the corporation's stock is held by one or more tax-exempt entities (other than a foreign person or entity). Section 168(h)(6)(E) applies similar rules in the case of tiered partnerships and other entities.

Under § 168(h)(6)(F)(ii), a tax-exempt controlled entity can 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.

Under § 301.9100-7T(a)(2)(i) of the Procedure and Administration Regulations, a § 168(h)(6)(F)(ii) election must be made by the due date of the tax return for the first taxable year for which the election is to be effective. Section 301.9100-7T(a)(3) provides the manner in which the § 168(h)(6)(F)(ii) election is made.

Section 301.9100-1(c) provides that the Commissioner of Internal Revenue has discretion to grant a reasonable extension of time to make a regulatory election. Section 301.9100-1(b) defines the term "regulatory election" as including any election the due date for which is prescribed by a regulation. Because the due date of the § 168(h)(6)(F)(ii) election is prescribed in § 301.9100-7T, the § 168(h)(6)(F)(ii) election is a regulatory election.

Sections 301.9100-1 through 301.9100-3 provide the standards the Service will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic extensions of time covered in § 301.9100-2) will be granted when the taxpayer provides evidence (including affidavits) to establish that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer –

(i) requests relief before the failure to make the regulatory election is discovered by the Service;
(ii) failed to make the election because of intervening events beyond the taxpayer's control;
(iii) failed to make the election because, after exercising due diligence, the taxpayer was unaware of the necessity for the election;
(iv) reasonably relied on the written advice of the Service; or
(v) reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election.

Under § 301.9100-3(b)(3), a taxpayer is considered to have not acted reasonably and in good faith if the taxpayer –

(i) seeks to alter a return position for which an accuracy-related penalty could be imposed under § 6662 at the time the taxpayer requests relief, and the new position requires a regulatory election for which relief is requested;
(ii) was fully informed of the required election and related tax consequences, but chose not to file the election; or
(iii) uses hindsight in requesting relief. If specific facts have changed since the original deadline that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief.

Section 301.9100-3(c)(1) provides that the Service will grant a reasonable extension of time only when the interests of the Government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made. Under § 301.9100-3(c)(1)(ii), the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made, or any taxable years affected by the election had it been timely made, are closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

ANALYSIS

The information submitted indicate that Taxpayer at all times intended from the outset to make the § 168(h)(6)(F)(ii) election, and that Taxpayer's failure to make the § 168(h)(6)(F)(ii) election was inadvertent. Taxpayer represents that it has requested relief before the failure to make the § 168(h)(6)(F)(ii) election was discovered by the Service pursuant to an examination. There is no evidence that Taxpayer is using hindsight in requesting relief. Furthermore, based on the facts presented and the representations made, Taxpayer will not have a lower tax liability for all tax years

affected by the § 168(h)(6)(F)(ii) than it would have had if the § 168(h)(6)(F)(ii) election had been timely made.

Although the taxable year in which the § 168(h)(6)(F)(ii) election should have been made is closed under § 6501, the above representations support our conclusion that Taxpayer has acted reasonably and in good faith. Therefore, the interests of the Government will not be prejudiced by the granting of relief.

CONCLUSION

Based solely on the facts as represented and the applicable law, we conclude that the requirements of § 301.9100-3 have been met, and the request for relief under § 301.9100-3 is granted. Accordingly, Taxpayer is treated as if it had made the § 168(h)(6)(F)(ii) election with the tax return it filed for Tax Year, provided that Taxpayer attaches a copy of this letter to the next tax return it files. Taxpayer also must attach the aforementioned § 168(h)(6)(F)(ii) election and the information set forth in § 301.9100-7T(a)(3) to its next return. If Taxpayer files electronically, it may satisfy this requirement by attaching a statement to the return that provides the date and control number of this letter ruling. In addition, the letter ruling (or statement) should be attached for all subsequent returns (and amended returns) for all taxable years to which this ruling is relevant.

Pursuant to § 301.9100-7T(a)(3)(ii), a copy of this letter and the § 168(h)(6)(F)(ii) election statement also should be attached to the federal income tax returns of each of the tax-exempt shareholders or beneficiaries of Taxpayer.

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. Further, we express no opinion concerning the assessment of any interest, additions to tax, additional amounts or penalties for failure to file a timely income tax return with respect to any taxable year.

The ruling in this letter is based upon the information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. Although this office has not verified any of the material submitted in support of the request for the ruling, it is subject to verification on examination.

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

Enclosed is a copy of the letter showing the deletions proposed to be made when it is disclosed under § 6110. If you have any questions concerning this matter, please contact the individual whose name and telephone number appear at the top of the letter.

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

Sincerely,

Seoyeon Sharon Park
Assistant to the Branch Chief, Branch 5
Office of Chief Counsel
(Income Tax & Accounting)

Enclosure (1)

cc: