Internal Revenue Service

Number: **201536003**
Release Date: 9/4/2015

Index Number: 9100.00-00, 9100.04-00, 168.00-00

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-106572-15

Date:
June 01, 2015

TY:

Legend

Taxpayer =

Member 1 =
Member 2 =

Partnership =
Tax Year =
State =
Affidavit 1 =

Affidavit 2 =

Affidavit 3 =

Law Firm =

Accounting Firm =

Inception Date =
Partnership Agreement =

Project =

Date =

Dear :

This letter is in response to a request for a private letter ruling dated January 29, 2015, submitted on your behalf by your authorized representative. Specifically, you have requested a ruling granting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations ("Regulations") for Taxpayer, a tax-exempt controlled entity under § 168(h)(6)(F)(iii) of the Internal Revenue Code ("Code"), to make an election under § 168(h)(6)(F)(ii) to not be treated as a tax-exempt controlled entity from Inception Date, and for a ruling granting an extension of time for Taxpayer to make an election under § 301.7701-3(c) of the Regulations to be treated as an association taxable as a corporation for federal tax purposes from Inception Date.

FACTS

The information submitted states that Taxpayer was organized as a limited liability company under the laws of State. Taxpayer uses an accrual method of accounting as its overall method of accounting and has the calendar year as its taxable year. Taxpayer is owned by Member 1 and Member 2, both of which have received determinations that they are tax-exempt organizations described in § 501(c)(3) of the Code. On Date, Taxpayer filed a Form 1065, U.S. Return of Partnership Income, for Tax Year. Taxpayer is governed by an Operating Agreement dated as of Inception Date, pursuant to which Member 1 acts as the managing member of Taxpayer, and Member 2 acts as the non-managing member. Taxpayer's sole business operation is to act as general partner in the Partnership.

Partnership is a limited partnership, which has recently completed the purchase and rehabilitation of Project. The purchase and rehabilitation of Project is being funded, in part, by § 42 low income housing credits. Partnership is governed by Partnership Agreement. Under § 9.33 of Partnership Agreement, Taxpayer, as general partner of Partnership, is required to make the election for Tax Year set forth in § 301.7701-3(c) of the Regulations to be treated as a corporation ("Corporation Election"), and the election under § 168(h)(6)(F)(ii) of the Code to not be treated as a tax-exempt controlled entity for purposes of the tax-exempt use property rules ("§ 168(h)(6)(F)(ii) election").

Taxpayer timely filed its federal income tax return for Tax Year. Taxpayer relied upon Accounting Firm to timely file its return and to make the § 168(h)(6)(F)(ii) election. Taxpayer relied upon Law Firm to make the Corporation Election by timely filing Form 8832, Entity Classification Election, with the Service for the Taxpayer to be classified as an association taxable as a corporation for federal income tax purposes pursuant to Partnership Agreement.

Accounting Firm failed to make the § 168(h)(6)(F)(ii) election. Consequently, that election was not included with Taxpayer's initial income tax return for Tax Year. Accounting Firm also failed to file the Taxpayer's initial income tax return for Tax Year as a corporate return, but instead filed a partnership return for the Taxpayer's initial

income tax return for Tax Year. Law Firm was aware of the requirement to timely file the Corporation Election, but nevertheless Law Firm failed to file that election.

Taxpayer represents that as soon as it, Law Firm and Accounting Firm realized that the above two elections had not been made, Taxpayer, Accounting Firm and Law Firm promptly filed the instant ruling requests to obtain extensions of time from the Service to make the Corporate Election and the § 168(h)(6)(F)(ii) election.

Taxpayer represents that at all times after formation of the Partnership it intended to make an election to be treated as an association taxable as a corporation for federal tax purposes and that it intended to make § 168(h)(6)(F)(ii) election effective Inception Date. However, Taxpayer inadvertently failed to timely file a Form 8832, Entity Classification Election. Given that § 9.33 of the Partnership Agreement required the timely filing of the Corporation Election and the § 168(h)(6)(F)(ii) election, there is no evidence that Taxpayer is using hindsight in requesting relief.

Taxpayer further represents that it relied on qualified tax professionals, Accounting Firm and Law Firm, to timely file the § 168(h)(6)(F)(ii) election and the Corporation Election respectively, and that the qualified tax professionals failed to make or advise Taxpayer to make the two elections. Taxpayer represents that it has requested relief before the failure to make the § 168(h)(6)(F)(ii) election and the Corporation Election was discovered by the Service. Taxpayer has submitted Affidavit 1, Affidavit 2, and Affidavit 3 to support its position. Taxpayer represents that it will not have a lower tax liability for all tax years affected by the § 168(h)(6)(F)(ii) election and the Corporation Election than it would have had if both elections had been timely made, and the taxable year in which the two elections should have been made is not closed under § 6501.

LAW

Section 167(a) of the 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 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 the 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 Regulations, the § 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 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7) or (8) (an eligible entity) can elect its classification for federal tax purposes as provided in § 301.7701-3. An eligible entity with a single owner can elect to be classified as an association taxable as a corporation or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(1) provides that except as provided in § 301.7701-3(b)(3), unless the entity elects otherwise, a domestic eligible entity is (i) a partnership if it has two or more members; or (ii) disregarded as an entity separate from its owner if it has a single owner.

Section 301.7701-3(c)(1)(i) provides, in part, that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b), or to change its classification, by filing Form 8832, Entity Classification Election, with the service center designated on Form 8832.

Section 301.7701-3(c)(1)(iii) provides that an election under § 301.7701-3(c)(1)(i) will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified on the election form. The effective date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed. If an election specifies an effective date more than 75 days prior to the date on which the election is filed, it will be effective 75 days prior to the date it was filed.

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 301.9100-1(c) provides that the Commissioner of Internal Revenue 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, or a statutory election (but not more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

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, that election is a regulatory election. In addition, because the due date of the Corporation Election is prescribed in § 301.7701-3(c) of the regulations, that election is a regulatory 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 subject to § 301.9100-3 will be granted when the taxpayer provides evidence, including affidavits described in § 301.9100-3(e), 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.

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 and representations submitted indicate that Taxpayer at all times intended from the outset to make the § 168(h)(6)(F)(ii) election and the Corporation Election; that Taxpayer relied on qualified tax professionals to make both elections; and that Taxpayer's failure to make the § 168(h)(6)(F)(ii) election and the Corporation Election was inadvertent. Taxpayer represents that it has requested relief before the failure to make both elections was discovered by the Service. There is no evidence that Taxpayer is using hindsight in requesting relief.

Further, 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) election and the Corporation Election than it would have had if both elections had been timely made, and the taxable year in which the § 168(h)(6)(F)(ii) election and the Corporation Election should have been made is not closed under § 6501. We conclude that Taxpayer has acted reasonably and in good faith. Further, the interests of the Government will not be prejudiced by the granting of relief.

Taxpayer requests an extension of time, under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations, to file the § 168(h)(6)(F)(ii) election and the Corporation Election to be treated as an association taxable as a corporation for federal tax purposes under § 301.7701-3. Based solely on the above facts and representations, we conclude that Taxpayer has met the requirements of §§ 301.9100-1 and 301.9100-3 with respect to obtaining an extension of time to file both the § 168(h)(6)(F)(ii) election and the Corporation Election.

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 with respect to the § 168(h)(6)(F)(ii) election. Accordingly, Taxpayer is granted an extension of time of 120 days from the date of this letter to file an amended return for Tax Year. Taxpayer must attach the aforementioned § 168(h)(6)(F)(ii) 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 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 members or beneficiaries of Taxpayer.

In addition, based solely on the facts submitted and representations made, we conclude that Taxpayer has satisfied the requirements of §§ 301.9100-1 and 301.9100-3 with respect to the Corporation Election. Accordingly, Taxpayer is granted an extension of time of 120 days from the date of this letter to elect to be treated as an association taxable as a corporation for federal tax purposes effective Date 1. The election should be made by filing a properly executed Form 8832 with the appropriate service center. A copy of this letter should be attached to the election.

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 rulings contained in this letter are 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,

William A. Jackson
Branch Chief, Branch 5
Office of Chief Counsel
(Income Tax & Accounting)

Enclosure (1)

cc: