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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:B04
PLR-107163-15

Date:
June 15, 2015

TY:

Taxpayer =
Corporation =
Partnership =
Firm 1 =
Firm 2 =
Year 1 =

Dear :

This is in response to your undated letter received on February 24, 2015, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedures and Administration Regulations for Taxpayer to file an election under § 168(h)(6)(F)(ii) of the Internal Revenue Code.

FACTS

Taxpayer is wholly-owned by Corporation, a tax-exempt entity. Taxpayer is also the general partner of Partnership, a limited partnership. Partnership completed and placed in service a low-income housing project in Year 1.

Since Taxpayer is wholly-owned by Corporation, Taxpayer is a tax-exempt controlled entity within the meaning of § 168(h)(6)(F)(iii) of the Code. Therefore, a portion of Partnership's depreciable property is tax-exempt use property. A designation of tax-exempt use property affects what depreciation Partnership can take for its depreciable property. Taxpayer may elect, under § 168(h)(6)(F)(ii) of the Code, not to be treated as a tax-exempt entity for purposes of § 168(h)(6). This election must comply with § 301.9100-7T of the regulations.

Taxpayer intended to file the § 168(h)(6)(F)(ii) election for Year 1. Also, Partnership's partnership agreement required Taxpayer to make the election under § 168(h)(6)(F)(ii) during Year 1. As verified by Firm 1 in a sworn affidavit, Firm 1 prepared Taxpayer's tax return for Year 1 yet inadvertently failed to prepare the election and attach it to the return. All relevant parties filed returns as if Taxpayer had made the § 168(h)(6)(F)(ii) election. Taxpayer retained Firm 2 to file Taxpayer's subsequent returns. Firm 2 discovered that Taxpayer had not made the election under § 168(h)(6)(F)(ii) and informed Taxpayer. Soon thereafter, Taxpayer requested relief under §§ 301.9100-1(c) and 301.9100-3 of the regulations.

LAW

Section 168(h)(6)(A) of the Code 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.

Under § 301.9100-3(c)(1)(i), 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 (taking into account the time value of money). Similarly, if the tax consequences of more than one taxpayer are affected by the election, the government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made.

ANALYSIS

Based on all of the facts and information submitted and the representations made, Taxpayer relied on a qualified tax professional for making its election under § 168(h)(6)(F)(ii). The tax professional failed to assure that Taxpayer made a timely election. Therefore, we conclude that Taxpayer has acted reasonably and in good faith as required under § 301.9100-3(b)(1).

Since all relevant parties filed returns as if Taxpayer had made the election, granting relief will not 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. Therefore, we also conclude that granting the requested relief will not prejudice the interests of the government.

RULING

Taxpayer is granted an extension of time of 60 days from the date of this letter to file an amended return for Year 1 making the election under § 168(h)(6)(F)(ii). Taxpayer must attach the aforementioned election and the information as set forth in § 301.9100-7T(a)(3) to the amended return. Taxpayer must also attach a copy of this letter to the amended return. In addition, each tax exempt shareholder and beneficiary of Taxpayer must attach a copy of the election statement and a copy of this letter to its federal income tax returns, pursuant to § 301.9100-7T(a)(3). Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that includes the required election statement and provides the date and control number of this letter ruling.

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).

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.

Sincerely,

J Peter Baumgarten
Assistant to the Branch Chief, Branch 4
Office of Chief Counsel
(Income Tax & Accounting)

cc: