Internal Revenue Service

Number: **201713004**
Release Date: 3/31/2017

Index Number: 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-120858-16
Date:
December 23, 2016

Legend:

Taxpayer   =
Parent   =
Transaction =
Month   =
Date 1   =
Date 2   =
Year 1   =
Year 2   =

Dear   :

This is in response to your letter of June 17, 2016 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 was formed in Year 1 and is taxed as a C Corporation for federal income tax purposes. Taxpayer's sole member is Parent, which is a tax-exempt entity under § 501. Based on Parent's 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 engaged in the ownership and development of residential rental property. On Date 1, Taxpayer closed a
                                . The building was placed in service as apartment rental units in Month. A subsidiary of Taxpayer closed a similar transaction shortly after

Taxpayer closed the Transaction, and the building that was the subject matter of that transaction also was placed in service in Year 2. Taxpayer and Parent were required by the transaction documents and at all times intended to make the § 168(h)(6)(F)(ii) election for Taxpayer to not be treated as a tax-controlled entity. The law firm that initially represented Taxpayer in the both transactions at first provided unclear advice about the election requirement but then corrected the advice and offered to assist in making the election. Subsequently, Taxpayer engaged a different law firm for unrelated reasons. The second law firm did not specifically advise Taxpayer regarding the election requirement, having presumed that the former law firm had advised Taxpayer. Consequently, Taxpayer did not advise accounting staff of Parent about the election requirement for Year 2. Taxpayer filed its Year 2 return on Date 2. Within a month after filing its return for Year 2, Taxpayer discovered its failure to make a timely § 168(h)(6)(F)(ii) election. Taxpayer has not made any distributions to Parent.

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 (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)(E) states that rules similar to subparagraph (A) apply to other entities, including tiered partnerships.

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), 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, we conclude that Taxpayer is entitled to relief under 301.9100-3(a).

Taxpayer must file an amended return for Year 2 making the election under § 168(h)(6)(F)(ii). Taxpayer must attach the election statement 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 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.

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.

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

Sincerely,

John Aramburu
Senior Counsel, Branch 5
Office of Chief Counsel
(Income Tax & Accounting)

cc: