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:PSI:B01
PLR-119146-16

Date:
December 13, 2016

LEGEND

X =

Exempt Organization =

P =

State =

Date 1 =

Year 1 =

Dear :

This letter responds to a request for a private letter ruling dated May 10, 2016, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting that the Service grant X an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election under § 301.7701-3(c) to be treated as an association taxable as a corporation for federal tax purposes effective on Date 1. Additionally, X requests an extension of time under § 301.9100-3 to make an election under § 168(h)(6)(F)(ii) of the Code not to be treated as a tax-exempt controlled entity from Date 1.

FACTS

According to the information submitted and representations made, X was formed as a limited liability company under the laws of State on Date 1. X represents that it is an entity eligible to elect to be treated as an association taxable as a corporation for federal tax purposes. X is wholly owned by Exempt Organization, which is represented to be a tax-exempt organization described in § 501(c)(3).

X is the general partner of P, a limited partnership which is treated as a partnership for federal tax purposes. P owns and operates a residential rental property, and placed the property in service in Year 1. P rehabilitated the rental property while it was in service.

X intended to be treated as an association taxable as a corporation for federal tax purposes effective Date 1 (the Corporation Election). However, due to inadvertence, X failed to timely file Form 8832, Entity Classification Election, to elect to be treated as an association taxable as a corporation for federal tax purposes. X also intended to make an election under § 168(h)(6)(F)(ii) 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). However, due to inadvertence, X failed to file in a timely manner its tax return for Year 1 and include a § 168(h)(6)(F)(ii) election with that return. Because of these actions, under the applicable regulations, X was considered an entity disregarded from Exempt Organization for federal tax purposes and, therefore, Exempt Organization was considered a partner in P for federal tax purposes.

After X realized that it had not timely filed the two elections, it requested relief under § 301.9100-3 to make an election to be treated as an association taxable as a corporation effective Date 1, as well as relief to make the election provided for under § 168(h)(6)(F)(ii) effective Date 1.

From the materials submitted, it is evident that, at all times, X intended to make the § 168(h)(6)(F)(ii) election. Moreover, X represents that it has acted reasonably and in good faith, that granting relief will not prejudice the interests of the government, and that it is not using hindsight in making either election.

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

We conclude that X has acted reasonably and in good faith. Further, the interests of the Government will not be prejudiced by the granting of relief. Based solely on the above facts and representations, we conclude that X has met the requirements of §§ 301.9100-1 and 301.9100-3 with respect to obtaining an extension of time to file both the Corporation Election and the § 168(h)(6)(F)(ii) election.

CONCLUSION

Based solely on the information submitted and the representations made, we conclude that, with respect to X's failure to timely elect to be treated as an association taxable as a corporation effective Date 1, the requirements of § 301.9100-3 have been satisfied. As a result, X is granted an extension of time of 120 days from the date of this letter to file a Form 8832 with the appropriate service center to elect to be treated as an association taxable as a corporation for federal tax purposes effective Date 1. A copy of this letter should be attached to the Form 8832 filed for X.

In addition, we also conclude that the requirements of § 301.9100-3 have been satisfied with respect to X's failure to make the election under § 168(h)(6)(F)(ii) for Year 1. Accordingly, X is granted an extension of time of 120 days from the date of this letter to make the election under § 168(h)(6)(F)(ii). The election must be attached to X's return for Year 1. X should also attach a copy of this letter to its return.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code.

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.

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: *David R. Haglund*
David R. Haglund
Chief, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy of this letter for section 6110 purposes