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:4
PLR-137114-16

Date:
May 22, 2017

Legend

Taxpayer =
Exempt Organization =
State =
Transaction =
Year 1 =

Dear :

This letter responds to your letter, dated November 23, 2016, requesting an extension of time for Taxpayer to make an election under § 168(h)(6)(F)(ii) of the Internal Revenue Code (Code).

FACTS

Taxpayer, a State corporation, is a subchapter C corporation for federal income tax purposes. Taxpayer uses the accrual method of accounting, and its taxable year is the calendar year.

Taxpayer is wholly owned by Exempt Organization, a tax-exempt entity described in § 501(c)(3) of the Code. Because Exempt Organization owns more than 50 percent in value of the stock of Taxpayer, Taxpayer is a "tax-exempt controlled entity" within the meaning of § 168(h)(6)(F)(iii).

Taxpayer closed the Transaction in Year 1. The documentation related to the Transaction required Taxpayer to make an election under § 168(h)(6)(F)(ii) for Year 1. Taxpayer failed to make the § 168(h)(6)(F)(ii) election on a return timely filed for Year 1. However, the affidavit and other information submitted support the conclusion that Taxpayer at all times intended to make a timely § 168(h)(6)(F)(ii) election. Upon

discovering this failure, Taxpayer promptly sought an extension of time in which to file the election.

APPLICABLE LAW

Section 167(a) of the Code generally provides 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 that 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 shall be treated as tax-exempt use property. Section 168(h)(6)(F)(i) generally provides that any tax-exempt controlled entity shall be treated as a tax-exempt entity for purposes of § 168(h)(5) and (6).

Under § 168(h)(6)(F)(ii), 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. Under § 301.9100-7T(a)(2)(i) of the Procedure and Administration Regulations, an election under § 168(h)(6)(F)(ii) 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 301.9100-3(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 for which a regulation prescribes the due date. The § 168(h)(6)(F)(ii) election is a regulatory election.

Sections 301.9100-1 through 301.9100-3 provide the standards that 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 a request for an extension of time for a regulatory election (other than one of the automatic changes 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 will be 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 will not be considered to have 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) 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. 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.

ANALYSIS

The facts submitted by Taxpayer indicate that Taxpayer intended from the outset to make the § 168(h)(6)(F)(ii) election, that its failure to make the election on a return filed timely was inadvertent, and that Taxpayer is not using hindsight in requesting relief. Moreover, Taxpayer requested relief before the failure to make the election was discovered by the Service. Finally, Taxpayer acted reasonably and in good faith, and the interests of the Government will not be prejudiced by the granting of relief under § 301.9100-3.

CONCLUSION

Based on the facts as represented and the applicable law, we conclude that the request for relief under § 301.9100-3 should be granted. Accordingly, Taxpayer is treated as if it had made the § 168(h)(6)(F)(ii) election with the tax return it filed for Year 1, provided that Taxpayer attaches a copy of this letter to the next tax return it files. In addition, pursuant to § 301.9100-7T(a)(3)(II), a copy of the election statement should be attached to the federal income tax return of its tax-exempt shareholder. 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.

This ruling is based on information and representations submitted by the taxpayer. While this office has not verified any of the material submitted in support of this request for a ruling, it is subject to verification on examination.

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) of the Code 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 beginning of the letter.

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

Sincerely,

Stephen J. Toomey
Senior Counsel, Branch 4
(Income Tax & Accounting)

Enclosure

cc: