Internal Revenue Service

Number: **202515011**
Release Date: 4/11/2025

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

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:B07
PLR-117034-24

Date:
January 10, 2025

Re:

Request for Extension of Time to Make the Election Not to be Treated as a Tax-exempt Controlled Entity

Legend

Taxpayer	=
Parent	=
X	=
Date 1	=
Firm	=
Date 2	=

Dear :

This letter ruling responds to a letter dated September 23, 2024, and subsequent correspondence, submitted by Taxpayer, in which Taxpayer requests an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make the election not to be treated as a tax-exempt controlled entity under § 168(h)(6)(F)(ii) of the Internal Revenue Code beginning with the taxable year ended Date 1 (Taxable Year).

This letter ruling is being issued electronically in accordance with section 7.02(5) of Rev. Proc. 2024-1, 2024-1 I.R.B. 1, 34.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer, a limited liability company, is regarded as a corporation for Federal income tax purposes. Taxpayer uses the calendar year as its annual accounting period and an accrual method of accounting. Taxpayer is engaged in the business of X.

Taxpayer is wholly owned by Parent. Because more than 50 percent of the partners in Parent are tax-exempt entities, owning more than 50 percent in the value of the stock of Taxpayer, Taxpayer is a tax-exempt controlled entity within the meaning of § 168(h)(6)(F)(iii).

Taxpayer provided supporting documentation and represented that Taxpayer intended at all times to make the election not to be treated as a tax-exempt controlled entity under §168(h)(6)(F)(ii) (Election) beginning with Taxable Year. Taxpayer engaged Firm to prepare and file its Federal income tax return for Taxable Year (Election Return). Taxpayer and Firm agreed that the Election would be made. Taxpayer relied on Firm to properly prepare and file its Election Return, including the election statement required for the Election pursuant to § 301.9100-7T(a)(3)(i) (Election Statement).

Taxpayer timely filed its Election Return. On the Election Return, property that was placed in service in Taxable Year was depreciated using the general depreciation system as if the Election were made. However, the Election Statement was inadvertently omitted when the Election Return was filed.

Notwithstanding the omission of the Election Statement from the Election Return, and consistent with Taxpayer's intent to make the Election, since Taxable Year, every Federal income tax return of Taxpayer has consistently applied the general depreciation system to property placed in service in Taxable Year as if the Election had been properly made.

In Date 2, as part of its preparation for a prospective transaction, Taxpayer asked Firm to confirm that the Election had been properly made on the Election Return in Taxable Year. Firm discovered that it had inadvertently omitted to include the Election Statement in the Election Return. Upon this discovery, Taxpayer engaged Firm to file this request to obtain an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 to file the Election Statement to satisfy the requirements for making the Election.

Taxpayer represented that, in requesting an extension of time to make the Election described herein for Taxable Year, it acted reasonably and in good faith. Further, although the period of limitations on assessment under § 6501(a) is closed for Taxable Year in which the Election should have been made, Taxpayer provided a statement from an independent auditor, as described in § 301.9100-3(c)(1)(ii), certifying

that the interests of the Government are not prejudiced (under the standards of § 301.9100-3(c)(1)(i)) by a grant of relief.

RULING REQUESTED

Taxpayer is requesting an extension of time under §§ 301.9100-1 and 301.9100-3 to properly make the Election.

LAW AND ANALYSIS

Section 167(a) generally provides for a depreciation deduction for property used in a trade or business. The depreciation deduction provided by § 167(a) for tangible property placed in service after 1986 generally is determined under § 168. Under § 168(g), the alternative depreciation system (rather than the general depreciation system provided under § 168(a)) must be used for any tax-exempt use property as defined in § 168(h).

Section 168(h)(6)(F)(i) provides generally that any tax-exempt controlled entity will be treated as a tax-exempt entity for purposes of §§ 168(h)(5) and (6). Section 168(h)(6)(F)(iii)(I) provides that a tax-exempt controlled entity means any corporation if 50 percent or more (in value) of the stock of such corporation is held by one or more tax-exempt entities. Because tax-exempt partners of Parent own more than 50 percent in value of Taxpayer's stock, Taxpayer is a tax-exempt controlled entity under that section.

Under § 168(h)(6)(F)(ii), a tax-exempt controlled entity may elect to not be treated as a tax-exempt entity. Accordingly, Taxpayer is eligible to make the Election. Section 168(h)(6)(F)(ii) also provides that any such election is irrevocable and will bind all tax-exempt entities holding interests in such tax-exempt controlled entity.

Under § 301.9100-7T(a)(2)(i), 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 301.9100-7T(a)(3) provides the manner in which the § 168(h)(6)(F)(ii) election is made.

Section 301.9100-1(c) provides that the Commissioner of Internal Revenue has the discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make certain regulatory elections.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make 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 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by regulations published in the Federal Register, a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. The requested Election is a regulatory election because the due date of the election is prescribed in § 301.9100-7T(a)(2)(i).

Taxpayer's request must be analyzed under the requirements of § 301.9100-3 because the automatic extensions provided in § 301.9100-2 are not applicable.

Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when a taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the Government.

Section 301.9100-3(c)(1)(ii) provides that 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 that would have been 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 § 301.9100-3. The Service may condition a grant of relief on the taxpayer providing the Service with a statement from an independent auditor (other than an auditor providing an affidavit pursuant to § 301.9100-3(e)(3)) certifying that the interests of the Government are not prejudiced under the standards set forth in § 301.9100-3(c)(1)(i).

CONCLUSION

Based solely on the facts and representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Taxpayer's request for an extension to file the Election is granted. Taxpayer is treated as if it had made the Election with the Election Return, provided that Taxpayer attaches a copy of this ruling letter, the Election, and the information set forth in § 301.9100-7T(a)(3) to the next Federal income tax return it files.

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 ruling. In addition, the letter ruling (or statement) should be attached to all subsequent Federal income tax returns (and amended returns) for all taxable years to which this ruling is relevant. 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 shareholders or beneficiaries of Taxpayer.

Except as expressly set forth above, we express no opinion concerning the tax consequences of the facts described above under any other provision of the Code or regulations.

The ruling contained in this letter ruling is based upon facts and representations submitted by Taxpayer with an accompanying penalty of perjury statement executed by the appropriate party. While this office has not verified any of the material submitted in support of this request for an extension of time to make the election not to be treated as a tax-exempt controlled entity, all material is subject to verification on examination.

This letter ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney, we are sending a copy of this letter ruling to Taxpayer's authorized representatives. We are also sending a copy of this letter ruling to the appropriate Service operating division official.

Sincerely,

Amy S. Wei
Senior Technician Reviewer, Branch 7
Office of Associate Chief Counsel
(Income Tax and Accounting)

Enclosures (2):
copy of this letter
copy for section 6110 purposes

cc: