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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
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Date:
March 25, 2025

LEGEND

X =

Y =

Partnership 1 =

Partnership 2 =

Agreement =

Project =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Tax Year =

Dear :

This letter responds to a letter dated September 17, 2024, and subsequent correspondence, submitted on behalf of X by its authorized representatives, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an election under § 168(h)(6)(F)(ii) of the Internal Revenue Code (Code) to not be treated as a tax-exempt controlled entity effective for Tax Year, and for a ruling granting an extension of time for X to file an entity classification election under § 301.7701-3 to be treated as an association taxable as a corporation for federal tax purposes effective Date 2.

FACTS

The information submitted states that X was formed as a limited liability company under the laws of State on Date 1. X has been wholly owned by Y, a tax-exempt entity described in § 501(c)(3), since its date of formation. X was formed to hold an interest in Partnership 1, a partnership formed on Date 3, which is the managing member of Partnership 2, a partnership formed on Date 3 pursuant to Agreement. X intended to be a Tax-Exempt Controlled Entity under § 168(h)(6)(F)(iii).

Partnership 2 was formed to provide affordable housing and, in furtherance of such purpose, to acquire, rehabilitate, own, lease, and manage Project. Project is a qualified low-income housing project pursuant to § 42 of the Code. Project was placed in service on Date 4. Under § 6.06(44) of the Agreement, X was required to make the election under § 168(h)(6)(F)(ii) of the Code 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"). In order to make the foregoing election, X was required to make an entity classification election under § 301.7701-3(c) to be treated as an association taxable as a corporation for federal tax purposes ("entity classification election").

X represents that at all times after the formation of Partnership 1 and Partnership 2 it intended to make an election to be treated as an association taxable as a corporation for federal tax purposes effective Date 2, and that it intended to make a § 168(h)(6)(F)(ii) election effective for Tax Year. However, X inadvertently failed to timely file a Form 8832, Entity Classification Election, and the § 168(h)(6)(F)(ii) election. Given that § 6.06(44) of Agreement required the timely filing of the entity classification election and the § 168(h)(6)(F)(ii) election, there is no evidence that X is using hindsight in requesting relief.

X represents that it will not have a lower tax liability for all tax years affected by the § 168(h)(6)(F)(ii) election and the entity classification election than it would have had

if both elections had been timely made, and the taxable year in which the two elections should have been made is not closed under § 6501. X and Y represent that they will file all required returns and/or amended returns as necessitated by the grant of the requested extension of time to make regulatory elections and will recognize any formerly unreported income as applicable.

LAW AND ANALYSIS

Section 167(a) provides generally 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)(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 non-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)(5) and (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).

Under § 168(h)(6)(F)(ii), a tax-exempt controlled entity can elect not to be treated as a tax-exempt entity for purposes of §§ 168(h)(5) and (6). 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), 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. 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) 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 this election will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified. The date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed and no more than 12 months after the date the election is filed.

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 the election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2.

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 entity classification election is prescribed in § 301.7701-3(c), that election is a regulatory election.

Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of the 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 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 the 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 the 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 year 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.

CONCLUSION

Based solely on the facts as represented and the applicable law, we conclude that X has satisfied the requirements of §§ 301.9100-1 and 301.9100-3 for granting an extension of time to file its § 168(h)(6)(F)(ii) Election and the entity classification election. X 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.

As a result, X is granted an extension of time of 120 days from the date of this letter to file the § 168(h)(6)(F)(ii) Election statement with the appropriate return containing the information required in § 301.9100-7T(a)(3) for that election to be effective for Tax Year. X must attach a copy of this letter ruling to its § 168(h)(6)(F)(ii) Election statement. Pursuant to § 301.9100-7T(a)(3)(ii), a copy of this letter and the § 168(h)(6)(F)(ii) election statement must also be attached to the federal income tax returns of each of the tax-exempt shareholders or beneficiaries of X.

Further, 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 2. A copy of this letter should be attached to the election.

These rulings are contingent on X, within 120 days from the date of this letter, filing all required returns for all relevant years consistent with the requested relief and timely paying and not contesting any additions to tax under § 6651 and interest under § 6601 in either case that the Service reasonably determines is due as a result of the rulings contained in this letter. A copy of this letter should be attached to any such returns for the tax years affected. Alternatively, if X files its tax returns electronically, it may satisfy this requirement by attaching a statement to its returns that provides the date and control number of this letter ruling.

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Further, except as expressly provided herein, we express no opinion concerning interest, additions to tax, additional amounts or penalties with respect to any taxable year. In addition, § 301.9100-1(a) provides that the granting of an extension of time for making an election is not a determination that the taxpayer is otherwise eligible to make the election.

The rulings contained in this letter are based upon information and representations submitted by the 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 ruling request, it is subject to verification on examination.

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.

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

Sincerely,

Associate Chief Counsel
(Passthroughs, Trusts, and Estates)

By:_____
Richard T. Probst
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Passthroughs, Trusts, and Estates)

Enclosure:
Copy of this letter for § 6110 purpose

cc: