Internal Revenue Service

Number: **201336014**
Release Date: 9/6/2013

Index Number: 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:B04
PLR-150927-12

Date:
May 23, 2013

In Re:

LEGEND

Taxpayer	=
Date 1	=
Year 1	=
State	=
Exempt Organization	=
Date 2	=
Partnership	=
a	=
Administrative General Partner	=
b	=
c	=
Investment Limited Partner	=
Apartments	=
Address	=
Energy Property	=
Year 2	=
Date 3	=
Date 4	=
Date 5	=
Amount	=

Partnership Agreement =

Dear :

This letter responds to your private letter ruling request, dated November 28, 2012, regarding an extension of time to make an election under § 168(h) of the Internal Revenue Code (Code). Specifically, you requested an extension of time to make an election under § 168(h)(6)(F)(ii) for Taxpayer, a tax-exempt controlled entity under § 168(h)(6)(F)(iii).

Facts

Taxpayer, which was formed on Date 1, Year 1, and is organized under the laws of State, uses the accrual method of accounting and has the calendar year as its taxable year. Taxpayer is a limited liability company that has elected to be taxable as a C corporation for federal income tax purposes. Exempt Organization created and wholly owns Taxpayer to participate in developing and operating affordable rental housing for lower income households, and for other related activities. Exempt Organization is a not-for-profit public benefit corporation which has received a determination that it is a tax-exempt organization described in § 501(c)(3). Because Exempt Organization owns more than percent in value of Taxpayer's stock, Taxpayer is a "tax-exempt controlled entity" within the meaning of Code § 168(h)(6)(F)(iii)(I).

On Date 2, Year 1, Partnership was formed under the laws of State. Taxpayer owns a percent of Partnership and is its Managing General Partner. Administrative General Partner owns b percent of Partnership, with the remaining c percent owned by Investment Limited Partner. Partnership was formed in part to rehabilitate, develop, improve, maintain, operate, and lease Apartments, located at Address. Apartments include low income housing.

Partnership is the recipient of proceeds from the U.S. Department of Treasury under Section 1603 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, 123 Stat. 115 (ARRA). ARRA Section 1603(d) provides for payments for specified energy property in lieu of certain tax credits under §§ 45 and 48 of the Code. Partnership retrofitted Apartments with a specific type of Energy Property. In Year 2, the Energy Property was placed in service on Date 3, and Partnership applied for the Section 1603 payment on Date 4. Partnership was notified of, and received an award of funds on Date 5, in Amount.

ARRA Section 1603 provides that program recipients cannot be organizations that are described under § 501(c) of the Code and exempt from tax under § 501(c), or by a pass-through entity in which any of the partners is a § 501(c) organization. However, a

program recipient may receive ARRA Section 1603 payments if it holds its interest through a taxable C corporation.

Under § 6.5(q) of the Partnership Agreement, Taxpayer, as Managing General Partner, was required to take all action necessary to qualify for the ARRA Section 1603 payments. Under § 6.5(s) of the Partnership Agreement, Taxpayer was to make the election, under § 168(h)(6)(F)(ii) of the Code, not to be treated as a tax-exempt entity.

Taxpayer should have made its § 168(h)(6)(F)(ii) on a timely filed return for Year 2. However, due to a series of misunderstandings, Taxpayer did not file a Year 2 return and thus failed to make a timely § 168(h)(6)(F)(ii) election. However, from the materials submitted it is clear that Taxpayer at all times intended to make the § 168(h)(6)(F)(ii) election. Upon discovering its failure, Taxpayer promptly sought an extension of time in which to file the election for 20 .

Applicable Law and Analysis

ARRA Section 1603, as amended by section 707 of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (TRUIRJCA), appropriated funds for payments to applicants who place specified energy property in service during 2009, 2010, or 2011 (ARRA Section 1603 payments).

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) provides generally 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 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 Procedure and Administration Regulations (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 301.9100-1(a) of the Regulations 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 the due date for which is prescribed by a regulation. The § 168(h)(6)(F)(ii) election is a regulatory election.

Sections 301.9100-1 through 301.9100-3 of the Regulations 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 requests for extensions of time for regulatory elections (other than 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) of the Regulations 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) of the Regulations, 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) of the Regulations 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.

Based on the facts and information submitted, we conclude Taxpayer intended from the outset to make the § 168(h)(6)(F)(ii) election, that its failure to make the election on its original return 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. Accordingly, pursuant to § 301.9100-3, Taxpayer is granted an extension of time of 60 days from the date of this letter ruling to file an election under § 168(h)(6)(F)(ii). To make the election, Taxpayer must file an original Federal income tax return for Year 2, and attach thereto the election and information set forth in § 301.9100-7T(a)(3)(ii). Also, Taxpayer must attach a copy of this letter to its return.

Although this office has not verified any of the material submitted or facts assumed in support of the request for ruling, they are 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 provisions of a power of attorney currently on file with this office, a copy of this letter is being sent to Taxpayer's authorized representative.

Sincerely,

Michael J. Montemurro
Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure: Copy for § 6110 purposes

cc: