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:B05
PLR-126949-13

Date:
December 11, 2013

Dear :

In a letter dated , the taxpayer named above (taxpayer) requested a private letter ruling under Rev. Proc. 2013-1, 2013-1 C.B. 1. Taxpayer, a C corporation, requested an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election under § 168(h)(6)(F)(ii) of the Internal Revenue Code.

FACTS

Taxpayer is wholly owned by , a tax-exempt entity described in § 501(c)(3) of the Code. Taxpayer is the general partner of a limited partnership, (Partnership), and owns percent of Partnership. It represents that Partnership was formed as a low-income housing tax credit partnership to acquire land, construct a multifamily residential building (Property), and rent individual units therein. Taxpayer further states that the rental units in the building were placed in service in as qualified low-income housing units.

The partners of Partnership cannot claim the low-income housing tax credit for certain expenditure under § 42, if Property is "tax-exempt use property" under § 168(h). Because taxpayer is wholly owned by a tax exempt entity, it is a "tax-exempt controlled entity" within the meaning of § 168(h)(6)(F)(iii), and a portion of Property is "tax-exempt use property." Under § 168(h)(6)(F)(ii), taxpayer may elect not to be treated as a tax-exempt entity for purposes of § 168(h)(6). This election must comply with the requirements of § 301.9100-7T of the temporary Procedure and Administration Regulations.

Under the partnership agreement of Partnership, taxpayer was required to make the § 168(h)(6)(F)(ii) election for taxable year (Taxable Year), the year when Property

was placed in service. Taxpayer intended to make the § 168(h)(6)(F)(ii) election for Taxable Year.

Taxpayer engaged certified public accountants to prepare its Federal income tax return for Taxable Year. Those accountants failed to include an election under § 168(h)(6)(F)(ii) in taxpayer's timely filed Federal income tax return for Taxable Year.

Subsequently, taxpayer changed accounting firms. Only then did taxpayer and the certified public accountants at the new firm discover the prior accountants' failure to prepare and include the § 168(h)(6)(F)(ii) election for Taxable Year. Taxpayer seeks relief under §§ 301.9100-1 and 301.9100-3 to make a late § 168(h)(6)(F)(ii) election.

LAW AND ANALYSIS

Section 168(h)(6)(A) provides that, for purposes of § 168(h), if (1) any property that is not “tax-exempt use property” is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, and (2) any allocation to the tax-exempt entity of partnership items is not a qualified allocation, then an amount equal to the tax-exempt entity's proportionate share of that property must be treated as “tax-exempt use property.” "Tax-exempt use property" is that portion of any tangible property (other than nonresidential real property) leased to a tax-exempt entity. See § 168(h)(1)(A).

Section 168(h)(6)(F)(i) provides that, for purposes of § 168(h)(6), any “tax-exempt controlled entity” must be treated as a tax-exempt entity.

Section 168(h)(6)(F)(ii) provides that, for purposes of § 168(h)(6), 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.”

Section 168(h)(6)(F)(iii) defines the term "tax-exempt controlled entity" as any corporation that is not a tax-exempt entity and in which one or more tax-exempt entities own 50 percent or more (in value) of the stock.

Section 301.9100-7T(a)(2)(i) of the Procedure and Administration Regulations requires elections under § 168(h)(6)(F)(ii) to be made by the due date of the tax return (including extensions) for the first taxable year for which the election is to be effective.

Under § 301.9100-1(c) and § 301.9100-3(a) and (b) the Procedure and Administration Regulations, the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election under all subtitles of the Code, except subtitles E, G, H, and I, if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice

the interests of the government. Under § 301.9100-3(b)(1)(v), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the information submitted and the representations made, we hold that taxpayer has acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government. The requirements of § 301.9100-3 have been satisfied in this case. Accordingly, taxpayer is granted an extension of time of 60 days from the date of this letter ruling to file an amended return for Taxable Year making the election under § 168(h)(6)(F)(ii). Taxpayer must attach the aforementioned election and the information set forth in § 301.9100-7T(a)(3) to the amended return. Taxpayer must attach a copy of this letter to the amended return. 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 each of the tax-exempt shareholders of taxpayer.

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 referred to in this letter. In particular, we express no opinion as to whether taxpayer qualifies to make the election set forth in § 168(h)(6)(F)(ii). We express no opinion as to whether any partners of Partnership are entitled to the low-income housing tax credit under § 42.

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.

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

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

Sincerely,

William A. Jackson
Chief, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures
Copy of this letter
Copy for § 6110 purposes