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:B04
PLR-101864-20

Date:
September 18, 2020

Taxpayer =
EIN: =

Exempt Organization =
EIN: =

State =

Partnership =

The Property =

Taxable Year 1 =

Date 1 =

Date 2 =

Dear :

This letter responds to your private letter ruling request, dated December 17, 2019, regarding an extension of time under § 301.9100-3 of the Treasury Regulations to make an election under § 168(h) of the Internal Revenue 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 seeking to not be treated as a tax-exempt entity under § 168(h)(6)(F)(ii), from its inception (Date 1).

Facts

Taxpayer is organized under the laws of State and is a limited liability company that has elected to be treated as a corporation for Federal income tax purposes. Taxpayer uses the cash method of accounting and the calendar year as its taxable year. Taxpayer is wholly owned by Exempt Organization. It has been represented that Exempt Organization is a tax-exempt organization described in § 501(c)(3). 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 is the general partner of Partnership. Partnership was formed to acquire, rehabilitate, operate, and lease buildings with numerous multifamily residential units known as the Property. Partnership first acquired and placed the Property in service on Date 1, and continued to place additional property in service until Date 2. Since its inception, Partnership has computed the depreciation deductions for Property utilizing the General Depreciation System, a method Partnership properly could have used if the § 168(h)(6)(F)(ii) election had been made timely. Taxpayer intended to make a timely Section 168 election, but inadvertently failed to do so. Upon discovering its failure to make the elections, Taxpayer promptly sought an extension of time in which to file the elections.

According to your request, Taxpayer intended to make a timely election under § 168(h)(6)(F)(ii) to be treated as a taxable entity, but inadvertently failed to do so. Additionally, the Taxpayer agreed, in good faith and in writing, in the partnership agreement to make an election under § 168(h)(6)(F)(ii) to be treated as a taxable entity.

Taxpayer relied on its tax preparer to prepare and file the necessary forms and elections for Taxable Year 1. However, the tax preparer inadvertently misunderstood Taxpayer to be a disregarded entity with no tax return filing obligation. Taxpayer subsequently engaged an accounting firm which notified the Taxpayer of its failure to timely file Form 1120 and make the § 168(h)(6)(F)(ii) election for Taxable Year 1. It has been represented that upon discovering its failure to make the election under § 168(h)(6)(F)(ii), Taxpayer promptly sought to take corrective action and filed a delinquent Form 1120. However, because Taxpayer's Form 1120 was not timely filed, Taxpayer could not make a § 168(h)(6)(F)(ii) election and is now requesting relief, under § 301.9100-1 and § 301.9100-3, to file a late § 168(h)(6)(F)(ii) election.

Applicable Law

Section 167(a) provides generally for a depreciation deduction for property used in a trade or business. However, § 168(g)(1) provides the alternative depreciation systems that must be used for any tax-exempt use property as defined in § 168(h).

Section 168(h)(6)(A) provides that (1) if any property which is not tax-exempt use property is owned by a partnership with 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 such property is treated as tax-exempt use property.

A tax-exempt controlled entity is treated as a tax-exempt entity under § 168(h)(6)(F)(i). Section 168(h)(6)(F)(iii)(I) defines a tax-exempt controlled entity as any corporation if 50 percent or more of the corporation's stock is held by one or more tax-exempt entities.

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. This election is irrevocable and will bind all tax-exempt entities holding an interest in the tax-exempt controlled entity.

Section 301.9100-7T(a)(2)(i) requires elections under § 168(h)(6)(F)(ii) to be made by the due date of the tax return for the first taxable year for which the election is to be effective. Under § 301.9100-1(c) and § 301.9100-3(a), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election provided 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.

Conclusion

Taxpayer is wholly owned by a tax-exempt entity as described in § 501(c)(3) and as such, is a tax-exempt controlled entity which is treated as a tax-exempt entity for purposes of § 168(h)(6). Under § 168(h)(6)(A), Taxpayer is able to elect not to be treated as a tax-exempt entity for purposes of § 168(h)(6).

Based solely on the facts and information submitted and representations made, we conclude that Taxpayer has satisfied the requirements of the §§ 301.9100-1 and 301.9100-3 for granting an extension of time to file its § 168(h)(6)(F)(ii) election. Taxpayer's intent was to make an election under § 168(h)(6)(F)(ii) to be treated as a taxable entity from inception, but failed to make an election on a timely filed tax return. This failure was inadvertent and Taxpayer is not using hindsight in requesting relief. Moreover, Taxpayer requested relief before the failure to make the election was discovered by the Internal Revenue 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 treated as if it had made a timely § 168(h)(6)(F)(ii) election for Taxable Year 1, provided that Taxpayer attaches a copy of this letter to the next Form 1120 it files with the Internal Revenue Service. In addition, pursuant to § 301.9100-7T(a)(3)(ii), a copy of the election statement should be attached

to the Federal tax returns of each of the tax-exempt shareholders or beneficiaries of Taxpayer. 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.

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 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.

The letter ruling contained in this letter is 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 request for this letter ruling, it is subject to verification on examination.

Pursuant to the provisions of a power of attorney and the private letter ruling request submission currently on file, we are sending a copy of this letter to Taxpayer's authorized representatives, and .

If you have any questions concerning this matter, please contact at .

Sincerely,

/LM/

Lisa Mojiri-Azad
Assistant to the Branch Chief, Branch 4
(Income Tax & Accounting)

cc: