**Internal Revenue Service**

Number: **202052001**
Release Date: 12/24/2020

Index Number: 9100.00-00, 9100.04-00, 9100.31-00, 168.00-00, 7701.00-00

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-103114-20

Date:
September 30, 2020

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| Taxpayer | = |
| Date 1 | = |
| Date 2 | = |
| Date 3 | = |
| Date 4 | = |
| Date 5 | = |
| Date 6 | = |
| Date 7 | = |
| State | = |
| Exempt Organization | = |
| Partnership | = |
| Year 1 | = |
| Year 2 | = |

Agreement =

Dear :

This letter responds to your letter, dated Date 1, in which Taxpayer requested an extension of time under § 301.9100-3 of the Procedure and Administration Regulations ("Regulations") to make two elections, each effective as of tax year Year 1. The elections are: (1) to file an election under § 301.7701-3(c) to treat Taxpayer as an association taxable as a corporation for federal tax purposes ("the Corporation Election"); and (2) to make an election under § 168(h)(6)(F)(ii) of the Internal Revenue Code ("Code") for Taxpayer to not be treated as a tax-exempt controlled entity ("the Section 168 Election").

## FACTS

Taxpayer represents that the facts are as follows.

Taxpayer was organized under the laws of State as a limited liability company on Date 2 and is a calendar-year taxpayer using the cash method of accounting. The Taxpayer serves as the co-general partner of Partnership. The Taxpayer has been wholly-owned by Exempt Organization, a tax-exempt entity described in § 501(c)(3), since its date of formation. 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) of the Code. The Taxpayer owns of Partnership.

Partnership was formed to acquire, construct, rehabilitate, develop, improve, maintain, own, operate, lease, dispose of and otherwise deal with a multi-family property for elderly persons, to be operated in an a manner that qualifies for federal low-income housing tax credits under § 42 of the Code (the "Property"). The Partnership purchased the Property in Year 1, and it continued to be operational during the rehabilitation period. The Partnership placed in service the acquired portion of the Property on Date 3 due to ongoing operations, and the Partnership placed the rehabilitated rental units in service between Date 4 and Date 5 as it completed rehabilitation in Year 2. The Taxpayer represents that at all times after the formation of the Partnership it intended to make an election to be treated as an association taxable as a corporation for federal tax purposes effective Date 6. However, the Taxpayer inadvertently failed to timely file a Form 8832, Entity Classification Election, effective Date 6. Instead, the Taxpayer inadvertently filed an election effective Date 7.

The Agreement states that no portion of the Partnership property will be treated as "tax-exempt use property" as defined in § 168(h) of the Code, a result that can be achieved

by the Taxpayer making an election pursuant to § 168(h)(6)(F)(ii). In addition, under Schedule 1 of the Agreement, the fourth installment of capital contributions is partially contingent on the Taxpayer making an election under § 168(h)(6)(F)(ii). These elections are made only by tax-exempt controlled entities, and tax-exempt controlled entities by definition must be corporations pursuant to § 168(h)(6)(F)(iii)(I).

Taxpayer has submitted three affidavits in support of its representations and its ruling request. The Taxpayer represents that the Taxpayer has requested relief before the failure to make the entity classification election was discovered by the Internal Revenue Service ("Service"). The Taxpayer further represents that it will not have a lower tax liability for all tax years affected by the entity classification election than it would have had if this election had been timely made, and the taxable year in which the election should have been made is not closed under § 6501. The Taxpayer has also provided a representation that it and its owner are not seeking to alter a return position for which a penalty has been or could be imposed under § 6662.

## LAW AND ANALYSIS

The Corporation Election

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 as provided in § 301.7701-3. 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 an election under § 301.7701-3(c)(1)(i) will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified on the election form. The effective date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed. If an election specifies an effective date more than 75 days prior to the date on which the election is filed, it will be effective 75 days prior to the date it was filed.

The Section 168 Election

Section 167(a) of the Internal Revenue Code provides generally for a depreciation deduction for property used in a trade or business. Under § 168(g), the alternative depreciation system 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 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 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)(6). Under § 168(h)(6)(F)(iii)(I), a corporation (without regard to that subparagraph and § 168(h)(2)(E)) constitutes a “tax-exempt controlled entity” 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). In the case of tiered partnerships and other entities, § 168(h)(6)(E) applies similar rules. Under § 168(h)(6)(F)(ii), a tax-exempt controlled entity can elect not to be treated as a tax-exempt entity. Once made, the election is irrevocable and will bind all tax-exempt entities holding an interest in the tax-exempt controlled entity.

Section 301.9100-1(c) provides that the Commissioner has the 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. Because the due date of the entity classification election is prescribed in § 301.7701-3(c), that election is a regulatory election. Because the due date of the § 168(h)(6)(F)(ii) election is prescribed in § 301.9100-7T, the § 168(h)(6)(F)(ii) election is a regulatory election.

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 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence, including affidavits described in § 301.9100-3(e), 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 reasonable 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 informed in all material respects 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 to make a regulatory election 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 § 301.9100-3.

## ANALYSIS

The information and representations submitted indicate that the Taxpayer at all times intended to make the § 168(h)(6)(F)(ii) election and the entity classification election to be classified as a corporation, and that the Taxpayer's failure to make the § 168(h)(6)(F)(ii) election and the entity classification election was inadvertent. The

Taxpayer represents that the Taxpayer has requested relief before the failure to make both elections was discovered by the Service. Taxpayer does not seek to alter a return position for which an accuracy-related penalty could be imposed under § 6662 at the time Taxpayer's request for relief. Taxpayer has also represented that it did not affirmatively choose to decline making the § 168(h)(6)(F)(ii) election and is not using hindsight in requesting relief.

Further, based on the facts presented and the representations made, the Taxpayer will not have a lower tax liability for all tax years affected by the entity classification election than the Taxpayer would have had if the election had been timely made, and the taxable year in which the entity classification election should have been made is not closed under § 6501(a). We conclude that the Taxpayer has acted reasonably and in good faith. Further, the interests of the Government will not be prejudiced by the granting of relief.

## CONCLUSION

Based solely on the facts as represented and the applicable law, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been met. Taxpayer is granted an extension of time of 60 days from the date of this letter ruling to make both the Corporation Election and the Section 168 Election. This ruling is contingent on Taxpayer filing, within 60 days from the date of this letter ruling, all required returns for all prior years consistent with the requested relief. As to the Corporation Election, Taxpayer should file a properly executed Form 8832 with the appropriate service center electing to be treated as an association taxable as a corporation effective Date 6. A copy of this letter ruling should be attached to the Form 8832. As to the Section 168 Election, Taxpayer should file the election statement with the appropriate service center containing the information required in § 301.9100-7T(a)(3). Taxpayer should attach a copy of this letter to the election statement.

A copy of this ruling should be attached to Taxpayer's federal tax returns for the tax years affected. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter ruling.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer, accompanied by a penalty of perjury statements executed by an appropriate party, and on other affidavits. This office has not verified any of the material submitted in support of the request for a ruling. However, as part of an examination process, the Service may verify the factual information, representations, and other data submitted.

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) provides that it may not be used or cited as precedent.

Pursuant to the Form 2848, Power of Attorney and Declaration of Representation, on file, we are sending a copy of this letter to Taxpayer's authorized representative.

This letter is being issued electronically in accordance with Rev. Proc. 2020-29, 2020-21 I.R.B. 859. A paper copy will not be mailed to the taxpayer.

Sincerely,

*/s/ Ronald J. Goldstein*

Ronald J. Goldstein
Senior Technician Reviewer, Branch 4
(Income Tax & Accounting)

cc: