Internal Revenue Service

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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:
CC:ITA:B05
PLR-119581-20

Date:
February 18, 2021

TY:

Legend

Taxpayer	=
Date A	=
State A	=
Partnership	=
Tax-Exempt Entity	=
Paragraph A	=
Operating Agreement	=
x percent	=
Investor Member	=
y percent	=
Paragraph B	=
Date B	=
Date C	=
Portion	=
Date D	=
Tax Year X	=
Tax Year Y	=
Individual A	=

Individual B =

Dear :

This letter responds to a request, dated September 3, 2020, for a private letter ruling granting an extension of time to make an election under § 168(h)(6)(F)(ii) of the Internal Revenue Code (Code) to Taxpayer, a tax-exempt controlled entity under § 168(h)(6)(F)(iii).

FACTS

Taxpayer, a C corporation, uses the calendar year as its annual accounting period and the cash method as its overall method of accounting. Taxpayer was formed on Date A as a domestic business corporation in State A to serve as co-managing member of Partnership. Tax-Exempt Entity uses a fiscal year ending on March 31st as its annual accounting period, and the accrual method as its overall method of accounting. Partnership is a State A limited liability company taxed as a partnership. Partnership uses the calendar year as its annual accounting period and the accrual method as its overall method of accounting.

Taxpayer is wholly owned by Tax-Exempt Entity, a tax-exempt organization under § 501(c)(3). Because Tax-Exempt Entity is the tax-exempt parent of Taxpayer, Taxpayer is a tax-exempt controlled entity as defined in § 168(h)(6)(F)(iii). Taxpayer is a co-managing member of Partnership, which was formed to acquire, rehabilitate, own, lease and manage an affordable housing project so that its owners would qualify for the low-income housing credit under § 42 of the Code.

Pursuant to Paragraph A of Operating Agreement, Taxpayer owns x percent of Partnership. Investor Member owns y percent of Partnership. Under Paragraph B of the Operating Agreement, Taxpayer agreed to make the election described in § 168(h)(6)(F)(ii) of the Code to not be treated as a tax-exempt entity.

Partnership acquired land on Date B, and began construction on Date C. After construction was completed on Portion, that property was placed into service on Date D.

Taxpayer should have made its election under § 168(h)(6)(F)(ii) on a timely-filed return for Tax Year X, the year that construction was completed on much of Partnership's project. Due to an oversight and lack of communication, Taxpayer inadvertently failed to make a timely election. On its tax return for Tax Year X, Partnership, however, claimed depreciation, including the special depreciation allowance on qualified property,

on property it placed in service in Tax Year X under the presumption that Taxpayer, the co-managing member of Partnership, had made the required election under § 168(h)(6)(F)(ii). Partnership requested an extension of time to file its partnership return until September 15th, and timely filed its return accordingly.

Pursuant to Rev. Proc. 2020-23, 2020-I.R.B. 749, the Partnership plans to file an amended Tax Year X return to claim the low-income housing credits that were unavailable because Forms 8609 were not issued by the relevant state agency prior to the extended due date. The amended return will not affect the depreciation claimed or any other expenses reported on the original Tax Year X return. The Partnership extended its Tax Year Y return to provide additional time to file. The Partnership plans to file a Tax Year Y return, on or before the extended due date, to reflect the § 168(h)(6)(F)(ii) election being made.

From the materials submitted, including affidavits submitted by Individual A and Individual B, it is clear the Taxpayer at all times intended to make the election under § 168(h)(6)(F)(ii). Upon discovering its failure, Taxpayer promptly sought an extension of time in which to file the election.

APPLICABLE LAW AND ANALYSIS

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) of the Income Tax Regulations provides generally that any tax-exempt controlled entity shall be treated as a tax-exempt entity for purposes of §§ 168(h)(5) and (6). Section 168(h)(6)(F)(iii)(I) provides that a tax-exempt controlled entity is any corporation if 50 percent or more (in value) of the stock is held by 1 or more tax-exempt entities. Because Tax-Exempt Entity owns more than 50 percent in value of Taxpayer's stock, Taxpayer is a tax-exempt controlled entity under that section.

Under § 168(h)(6)(F)(ii), a tax-exempt controlled entity may elect to not 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 election allowed by § 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.

CONCLUSION

Based on the material submitted, we conclude that Taxpayer's failure to make the election on its original return for Tax Year X 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, Taxpayer is treated as if it made a timely election under § 168(h)(6)(F)(ii), provided it attaches a copy of this letter to the next return it files.

This ruling is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement signed by an appropriate party. Although this office has not verified any of the material submitted in support of the request for ruling, it is 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.

Enclosed is a copy of the letter showing the deletions proposed to be made when it is disclosed under § 6110 of the Code. If you have any questions concerning this matter, please contact the individual whose name and telephone number appear at the beginning of the 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.

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

A copy of this letter must be attached to any income tax return to which it is relevant. 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 the letter ruling.

Sincerely,

Christina M. Glendening
Senior Counsel, Branch 5
Office of Chief Counsel
(Income Tax & Accounting)

Enclosure (1)

cc: