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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:
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Date:
March 10, 2021

Legend

Taxpayer =

Consultant =

Law Firm =

Year 1 =

Year 2 =

Accountant =

Property =

Tenant =

State A =

State B =

Dear :

This responds to a letter, dated September 30, 2020, submitted on behalf of Taxpayer, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make an election under § 1.48-4 of the Income Tax Regulations for Year 1.

FACTS

According to the information submitted and representations made, Taxpayer, a limited liability company organized under the laws of State A, owns the Property. Taxpayer rehabilitated the Property in a manner to qualify for the rehabilitation credit under § 47 of the Internal Revenue Code. Tenant, a limited liability company organized under the laws of State B, leases the rehabilitated Property from Taxpayer.

Taxpayer retained the services of Consultant and Law Firm to structure the transaction using a lease to transfer the rehabilitation credit to Tenant in accordance with § 1.48-4. Taxpayer agreed to elect to treat Tenant as having acquired the Property pursuant to § 50(d)(5) and § 1.48-4 and to take all such actions so that Tenant can claim the credit generated by the rehabilitation of the Property. The lease required Taxpayer to make the election before the due date (including any extensions of time) of the Tenant's return for the taxable year based on the placed in service date. The Property was placed in service and possession was transferred to Tenant in Year 1.

Accountant prepared and timely filed Taxpayer's return for Year 1 but, through inadvertence, omitted the election. Consistent with the parties' intent that Taxpayer make an election, on its return for Year 1, Tenant took into account the rehabilitation credit. In Year 2, Taxpayer discovered that an election had not been made.

LAW AND ANALYSIS

Section 38(a) allows a credit for the taxable year in an amount equal to the sum of (1) the business credit carryforwards carried to the taxable year, (2) the amount of the current year business credit, plus (3) the business credit carrybacks carried to the taxable year.

Under § 38(b)(1), the amount of the current year business credit includes the investment credit under § 46. Under § 46(1), the investment credit includes the rehabilitation credit under § 47.

Section 47(a), before amendment by Pub. L. 115-97, Sec. 13402(a), provided that the rehabilitation credit for any taxable year is the sum of (1) 10 percent of the

qualified rehabilitation expenditures with respect to any qualified rehabilitated building other than a certified historic structure, and (2) 20 percent of the qualified rehabilitation expenditures with respect to any certified historic structure.

Under § 47(b)(1), qualified rehabilitation expenditures with respect to any qualified rehabilitated building shall be taken into account for the taxable year in which the qualified rehabilitated building is placed in service.

Section 50(d)(5) makes applicable rules similar to the rules of former § 48(d) (relating to certain leased property) as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990. Under former § 48(d)(1) a person who is a lessor of property may (at such time, and in such manner, and subject to such conditions as are provided by regulations prescribed by the Secretary) elect with respect to any new § 38 property (other than property described in former § 48(d)(4)) to treat the lessee as having acquired such property.

Section 1.48-4(a)(1) allows a lessor of property to elect to treat the lessee of the property as having purchased the property for purposes of the rehabilitation credit if the conditions specified in § 1.48-4(a)(1)(i) through (v) are satisfied.

Section 1.48-4(a)(1)(iv) requires a statement of election to treat the lessee as a purchaser to be filed in the manner and within the time provided in § 1.48-4(f) or (g).

Section 1.48-4(f)(1) states that the election of the lessor with respect to a particular property (or properties) must be made by filing a statement with the lessee, signed by the lessor and including the written consent of the lessee, containing the information specified in § 1.48-4(f)(1)(i) through (vii).

Section 1.48-4(f)(2) provides that the § 1.48-4(f)(1) election statement must be filed with the lessee on or before the due date (including any extensions of time) of the lessee's return for the lessee's taxable year during which possession of the property is transferred to the lessee.

Section 1.48-4(j) provides that the lessor and the lessee must keep as a part of their records the election statement referred to in § 1.48-4(f)(1) and that the lessor must attach to its income tax return a summary statement of all property leased during its taxable year with respect to which an election is made. The summary statement must contain the following information: (1) the name, address, and taxpayer account number of the lessor; and (2) in numerical account number order, each lessee's account number, name, and address, the estimated useful life category of the property (or, if applicable, the estimated useful life expressed in years), and the basis or fair market value of the property, whichever is applicable.

Sections 301.9100-1, 301.9100-2, and 301.9100-3 of the Procedure and Administration Regulations set forth the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory extension.

Section 301.9100-1(a) provides that an extension of time is available for elections that a taxpayer is otherwise eligible to make. The granting of an extension of time, however, is not a determination that the taxpayer is eligible to make the election.

Section 301.9100-1(b) provides that the term "election" includes an application for relief in respect of tax and that the term "regulatory election" includes an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I.

Section 301.9100-2 provides automatic extensions of time for making certain elections.

Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2. A request for relief will be granted under § 301.9100-3 when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

CONCLUSION

Based solely on the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301-9100-3 have been satisfied. Accordingly, Taxpayer is granted an extension of time of 120 days from the date of this letter to make an election under § 1.48-4(a) for Year 1. For this purpose, Taxpayer must file a statement of election in accordance with § 1.48-4(f). Further, Taxpayer must file an amended return for Year 1, attaching the summary statement required by § 1.48-4(j) and a copy of this letter. A copy of this letter is enclosed for that purpose.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the facts described above under any provisions of the Code. In particular, we express no opinion on whether Taxpayer's rehabilitation expenditures with respect to the Property are qualified rehabilitation expenditures under § 47, whether Taxpayer's rehabilitation of the Property otherwise meets the requirements under § 47, or on the applicability of the amendments to § 47 by Pub. L. 115-97, Sec. 13402. Further, we express no opinion on whether any of the limited liability companies involved are partnerships for federal tax purposes, whether any of

the members of the limited liability companies are partners for federal tax purposes, or whether the lease at issue is a lease for federal tax purposes.

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 a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The ruling contained in this letter is based upon information submitted and representations made 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 ruling, it is subject to verification on examination.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By: *James A. Holmes*
JAMES A. HOLMES
Senior Counsel, Branch 5
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter
Copy for 6110 purposes

cc: