Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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Date:
August 17, 2021

TY:

Legend

Taxpayer 1 =

Taxpayer 2 =

Corporation 1 =

Corporation 2 =

Bank 1 =
Bank 2 =
Landlord =

Property =

Tenant =

Managing Member =

Date 1 =
Date 2 =
Date 3 =
Date 4 =

State =
a percent =
b percent =
c percent =
d percent =
e percent =
Return Preparer 1 =
Return Preparer 2 =
Tax Year =
Individual =
Law Firm =
Representative =

Dear :

This is in response to your Request for a Private Letter Ruling dated March 17, 2021, filed by your authorized representative on behalf of Taxpayer 2. Our office notes that your requested rulings letter was filed in tandem with a substantially identical Request for a Private Letter Ruling letter submitted by the same authorized representative on behalf of Taxpayer 1. The rulings requested are substantially identical with respect to both Taxpayer 1 and Taxpayer 2 (collectively, “Taxpayers”), two entities with a common member, sponsor, or parent, or for multiple members of a common entity or consolidated group, or parties engaged together in the same transaction affecting all requesting taxpayers.

Specifically, each Taxpayer is requesting that the Internal Revenue Service exercise its authority under § 301.9100-3 of the Procedure and Administration Regulations (Regulations) to grant an extension of time within which to file an election to not be treated as a tax-exempt controlled entity for purposes of the tax-exempt use property rules (the "election") under § 168(h)(6)(F) of the Internal Revenue Code (“Code”).

FACTS

Taxpayer 1 is a domestic corporation. Taxpayer 1 was formed as a limited liability company under the laws of State on Date 2. Taxpayer 1 uses the calendar year as its annual accounting period and the accrual method as its overall method of accounting. Taxpayer 1 is wholly owned by Corporation 1, a § 501(c)(3) tax- exempt organization. Corporation 1 uses the calendar year as its annual accounting period and the accrual method as its overall method of accounting. Accordingly, Taxpayer 1 is a tax-exempt controlled entity under § 168(h)(6)(F)(iii) of the Code.

Taxpayer 2 is a domestic corporation. Taxpayer 2 was formed as a limited liability company under the laws of State on Date 3. Taxpayer 2 uses the calendar year as its annual accounting period and the accrual method as its overall method of accounting. Taxpayer 2 is wholly owned by Corporation 2, a § 501(c)(3) tax- exempt organization.

Corporation 2 uses the calendar year as its annual accounting period and the accrual method as its overall method of accounting. Accordingly, Taxpayer 2 is a tax-exempt controlled entity under § 168(h)(6)(F)(iii) of the Code.

Landlord is a domestic partnership that uses the calendar year as its annual accounting period and the accrual method as its overall method of accounting. Taxpayer 1 owns a percent of Landlord; Taxpayer 2 owns b percent of Landlord; Tenant owns c percent of Landlord; and Bank 1 owns d percent of Landlord. Landlord is the landlord of the Property.

Tenant is a domestic partnership that uses the calendar year as its annual accounting period and the accrual method as its overall method of accounting. Tenant is the tenant of the Property. Managing Member owns d percent of Tenant, and Bank 2 owns e percent of Tenant. Managing Member is a domestic corporation that uses the calendar year as its annual accounting period and the accrual method as its overall method of accounting.

Landlord was organized to develop, finance, rehabilitate, construct, own, operate, maintain, lease and sell or otherwise dispose of the Property. Landlord qualified the property for the rehabilitation credit under § 47 of the Code, and it elected to pass the credit through to Tenant under § 50(d). Tenant was organized to lease, hold, and maintain the Property as a commercial office building and related facilities. Tenant is a managing member of Landlord with a c percent ownership interest. Managing Member is Tenant's managing member.

Landlord and Tenant executed an agreement on Date 4, which stated that neither Landlord nor any of its members constitute a "tax-exempt controlled entity' within the meaning of § 168(h)(6)(F)(iii) of the Code. Further, under Landlord's operating agreement, Taxpayers were required to make an election under § 168(h)(6) of the Code so that the rehabilitation credit would not be limited as a result of a portion of the property being treated as tax-exempt use property.

Corporation 1 hired Return Preparer 1 to prepare returns for Taxpayer 1. Corporation 2 hired Return Preparer 2 to prepare returns for Taxpayer 2. The tax return preparers mistakenly failed to prepare Forms 1120, U.S. Corporation Income Tax Return, for the Taxpayers due to the tax return preparers' assumption that the Taxpayers were single member LLCs disregarded for federal income tax purposes. As a result, the federal income tax returns for Tax Year for Taxpayers were not timely filed and the § 168(h)(6)(F)(ii) elections were not timely made.

In the summer of 2020, while conducting an internal audit between Corporation 2's legal and accounting departments, it was discovered that Taxpayer 2 had not filed Forms 1120, *U.S. Corporation Income Tax Return*. Corporation 2 then confirmed with Taxpayer 1 that Forms 1120 were also not filed for Taxpayer 1. Without properly made § 168(h)(6)(F)(ii) elections, the tax returns related to the Property were incorrectly filed.

The Taxpayers requested that Individual of the Law Firm conduct a due diligence investigation. Individual confirmed that Taxpayer 1 had filed Form 8832, Entity Classification Election electing to be treated as a C corporation; he was informed that Taxpayer 2 had filed Form 8832, *Entity Classification Election*, electing to be treated as a C corporation, but that the Taxpayers had not filed returns or made the § 168(h)(6)(F)(ii) elections. The Taxpayers then commissioned Representative to file this Private Letter Ruling request.

The Taxpayers represent that the federal income tax returns of Landlord, Tenant, Bank 1, and Bank 2 were filed as if the § 168(h)(6)(F)(ii) elections were timely made.

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

Accordingly, the Taxpayers request an extension of time within which to make section 168(h)(6)(F)(ii) elections for the Taxpayers and to allow the Taxpayers' elections to be effective as of Date 1.

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 Corporation 2 owns more than 50 percent in value of Taxpayer 2'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 Internal Revenue 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 Internal Revenue 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 Internal Revenue Service will not ordinarily grant relief.

Section 301.9100-3(c) of the Regulations provides that the Internal Revenue 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 2's failure to make the election on its original return for Tax Year was inadvertent, and that Taxpayer 2 is not using hindsight in requesting relief. Moreover, Taxpayer 2 requested relief before the failure to make the election was discovered by the Internal Revenue Service. Finally, Taxpayer 2 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. 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 2 is granted an extension of 60 days from the date of this ruling to file the election statement with the appropriate service center containing the information required in § 301.9100-7T(a)(3) for the election to be effective on Date 1. Taxpayer 2 must attach a copy of this letter to the election statement. Further, the letter ruling should be attached for all subsequent returns (and amended returns) for all taxable years to which this ruling is relevant. 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 the tax-exempt shareholders of Taxpayer 2.

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,

Erika C. Reigle
Senior Technician Reviewer, Branch 5
Office of Chief Counsel
(Income Tax & Accounting)

Enclosure (1)

cc: