

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

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Date:
December 02, 2022

Taxpayer =
Member 1 =

Managing Entity =
Project Owner =
State =
Y =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Year 1 =

Dear :

This letter responds to Taxpayer’s request, dated June 1, 2022, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to make elections under § 301.7701-3(c) and § 168(h)(6)(F)(ii) of the Internal Revenue Code (Code).

FACTS

Taxpayer is a limited liability company formed under the laws of State on Date 1. The sole member of Taxpayer is Member 1, an entity exempt from taxation under § 501(c)(3) of the Code.

Taxpayer owns a Y% membership interest in Managing Entity, which is the managing member of Project Owner. Project Owner operates and leases a mixed-use project in State. The financial closing of the project, and the adoption of Project Owner’s

operating agreement occurred on Date 2. Some of the costs incurred by Project Owner in rehabilitating the project were intended to be qualified rehabilitation expenditures under § 47. Pursuant to Project Owner's operating agreement, Taxpayer, as a member of Managing Entity, was required to elect to change its classification to be classified as an association taxable as a corporation for federal tax purposes in order to file an election under § 168(h)(6)(F)(ii) to not be treated as a tax-exempt controlled entity.

Prior to Date 3, Taxpayer was disregarded as an entity separate from its owner for federal tax purposes. Taxpayer represents that it intended to elect to change its classification to be classified as an association taxable as a corporation for federal tax purposes effective Date 3. To make such an election, Taxpayer was required to file an election pursuant to § 301.7701-3(c). However, due to intervening events beyond its control, Taxpayer failed to file a Form 8832, *Entity Classification Election*, electing to classify Taxpayer as an association taxable as a corporation effective Date 3. Taxpayer also failed to make the election under § 168(h)(6)(F)(ii) for Year 1. While preparing its tax return for the tax year ending on Date 4, Member 1 discovered Taxpayer's failure to make the elections under § 301.7701-3(c) and § 168(h)(6)(F)(ii).

APPLICABLE LAW

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. An eligible entity with a single owner can elect to be classified as an association 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)(i) 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 with the service center designated on Form 8832.

Section 301.7701-3(c)(1)(iii) provides that an election made 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.

Section 167(a) of the Code generally provides for a depreciation deduction for property used in a trade or business. Under § 168(g), an alternative depreciation system must

be used for any tax-exempt use property as defined in § 168(h). Section 168(h)(6)(F)(i) provides a tax-exempt controlled entity is treated as a tax-exempt entity for purposes of § 168(h)(6).

Section 168(h)(6)(A) provides that, for purposes of § 168(h), if any property which 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. 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.

Under § 301.9100-7T(a)(2)(i) of the Procedure and Administration Regulations, a § 168(h)(6)(F)(ii) election 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 301.9100-7T(a)(3)(i) provides that a § 168(h)(6)(F)(ii) election must be made by attaching a statement to the tax return for the taxable year for which the election is to be effective.

Section 301.9100-1(c) provides that the Commissioner of Internal Revenue 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 for which a regulation prescribes the due date.

Sections 301.9100-1 through 301.9100-3 provide the standards 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 a request for an extension of time for a regulatory election (other than automatic extensions of time 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) 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 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), a taxpayer will not be 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 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)(1) provides that the Service will grant a reasonable extension of time only when doing so will not prejudice the interests of the Government. 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.

Section 301.9100-1(b) provides that the term “regulatory election” includes an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-2 provides the standards the Commissioner will use to determine whether to grant an automatic extension of time for making certain elections.

Section 301.9100-3 provides the guidelines for granting extensions of time for making 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 the 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 relief will not prejudice the interests of the Government.

ANALYSIS

The facts submitted by Taxpayer indicate that Taxpayer intended at the outset of the engagement with Project Owner to make both the elections under § 301.7701-3(c) and § 168(h)(6)(F)(ii), that its failure to make the elections on a timely-filed return was inadvertent, and that Taxpayer is not using hindsight in requesting relief. Further, Taxpayer requested this relief before the failure to make the elections was discovered by the Service. Finally, Taxpayer acted reasonably in and good faith, and the interests of the government will not be prejudiced by the granting of relief under § 301.9100-3.

CONCLUSION

Based solely on the information submitted and the representations made, we conclude that Taxpayer has satisfied the requirements of §§ 301.9100-1 and 301.9100-3. As a result, we grant Taxpayer an extension of time of one hundred twenty (120) days from the date of this letter to file Form 8832 with the appropriate service center to elect to be classified as an association taxable as a corporation for federal tax purposes effective Date 3. A copy of this letter should be attached to the Form 8832.

Additionally, Taxpayer is granted an extension of one hundred twenty (120) days from the date of this letter to file an amended return making the election under § 168(h)(6)(F)(ii) for Year 1. Taxpayer must attach a copy of this ruling letter to its amended return. If Taxpayer files its amended return electronically, it may satisfy this requirement by attaching a statement to its amended return that provides the date and control number of this letter ruling.

This ruling is contingent on Taxpayer and its owner filing within 120 days from the date of this letter all required original or amended information and tax returns for all open years consistent with the requested relief. A copy of this letter should be attached to any such returns.

This ruling is based upon information and representations submitted 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 a 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. Specifically, this ruling grants an extension of time to make elections under § 301.7701-3(c) and § 168(h)(6)(F)(ii). However, § 301.9100-1(a) provides that the granting of an extension of time for making an election is not a determination that the taxpayer is otherwise eligible to make the election.

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 representatives. This letter is being issued electronically in accordance with Rev. Proc. 2022-1, 2022-1 I.R.B. 1. A paper copy will not be mailed to Taxpayer.

Sincerely,

Angella L. Warren
Branch Chief, Branch 4
Office of the Associate Chief Counsel
(Income Tax & Accounting)

Enclosure:

Copy of this letter for § 6110 purposes

cc: