

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **202429014**  
Release Date: 7/19/2024  
Index Number: 9100.04-00

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:

ID No.

Telephone Number:

Refer Reply To:  
CC:ITA:B05  
PLR-124326-23

Date:  
April 24, 2024

Legend

Taxpayer =  
Sole Member =  
  
Partnership =  
Project =  
Year 1 =  
State Z =  
Accountant =  
New Accountant =  
Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =  
Date 5 =  
Date 6 =

Dear :

This ruling responds to Taxpayer’s request dated Date 1. Specifically, Taxpayer is requesting that the Internal Revenue Service (“IRS”) exercise its authority under § 301.9100-3 of the Procedure and Administration Regulations (Regulations) to grant an extension of time so that its election to forgo treatment as a tax-exempt entity (“Section 168(h)(6) Election”) under section 168(h)(6)(F)(ii) of the Internal Revenue Code (“IRC”) will be treated as timely filed and valid.

## FACTS

On Date 2, Sole Member, a tax-exempt entity under Section 501(c)(3), created Taxpayer as a wholly owned entity to provide housing for low-income persons and to serve as a general partner in a limited partnership that owns and operates housing for the benefit of low-income persons. Taxpayer was organized as a limited liability company under the laws of State Z and is treated as a corporation for federal income tax purposes.

On Date 4, Taxpayer was admitted as a managing general partner of Partnership. Partnership, formed on Date 3, by parties unrelated to Sole Member or Taxpayer, had as its purposes "to develop, rehabilitate, own, maintain and operate the Project. Partnership's Limited Partnership Agreement ("LPA") provides that:

No portion of the Project is or will be treated as "tax-exempt use property" as defined in Section 168(h) of the Code. In the event a General Partner or any member or partner of a General Partner is controlled by a tax-exempt entity, such entity will make the election permitted under Section 168(h)(6)(F) of the Code

Because Taxpayer is wholly owned by Sole Member, a tax-exempt entity, it was required to make the Section 168(h)(6) Election under the LPA.

When Taxpayer became a partner in Partnership, Sole Member engaged Accountant, who had acted as Sole Member's tax advisor and tax return preparer in the past, to prepare returns for Taxpayer and Sole Member. Accountant, a certified public accountant, had over 30 years of public accounting experience. According to publicity materials, Accountant specializes in tax work relating to nonprofit organizations and affordable housing and real estate and presents the areas of expertise to include tax planning and compliance for not-for-profit organizations. Sole Member provided Accountant a copy of the LPA at the time of engagement. Taxpayer and Sole Member believed that the election was made to take effect on or before Date 4. However, Accountant did not prepare a separate income tax return for Taxpayer for Year 1 and therefore failed to make the Section 168(h)(6) Election for Taxpayer.

On Date 5, during a compliance review, it was discovered that the Section 168(h)(6) Election was never made. Sole Member alerted its new tax advisor, New Accountant, and worked to take corrective action. On Date 6, Taxpayer filed its tax return for Year 1, making the Section 168(h)(6) Election.

After Taxpayer became aware of the consequences of failing to timely file the Section 168(h)(6) Election, this request for relief was submitted under §§ 301.9100-1 and 301.9100-3. Taxpayer represents that it relied on Accountant to make a timely Section 168(h)(6) Election. Taxpayer further represents that the granting of relief under § 301.9100-3 will not result in a lower tax liability for the years affected by the election.

The foregoing are material facts on which this ruling is based.

### LAW AND ANALYSIS

Section 167(a) of the Code generally provides for a depreciation deduction for property used in a trade or business. The depreciation deduction provided by section 167(a) for tangible property placed in service after 1986 generally is determined under section 168. Under section 168(g), the alternative depreciation system must be used for any tax-exempt use property as defined in section 168(h).

Section 168(h)(6)(A) provides that, for purposes of section 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) provides generally that any tax-exempt controlled entity shall be treated as a tax-exempt entity for purposes of section 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.

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.

Because Sole Member is a tax-exempt entity which owns all of the membership interests in Taxpayer, Taxpayer is a tax-exempt controlled entity within the meaning of section 168(h)(6)(F)(iii)(I). Accordingly, Taxpayer is eligible to make the section 168(h)(6) election.

Under § 301.9100-7T(a)(2)(i) of the Regulations, an election under section 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.

Sections 301.9100-1 through 301.9100-3 provide the standards that the Commissioner 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 extensions 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 that the grant of relief will not prejudice the interests of the Government.

Under § 301.9100-3(b)(1)(v), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a

tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election. Section 301.9100-3(b)(2) provides that a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not competent to render advice on the regulatory election or aware of all relevant facts.

In addition, § 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonably and in good faith if the taxpayer—

- (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief, and the new position requires or permits a regulatory election for which relief is requested;
- (ii) was fully informed in all material respects of the required election and related tax consequences but chose not to make 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 Commissioner will grant a reasonable extension of time to make the regulatory election only when the interests of the Government will not be prejudiced by the granting of 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 (taking into account the time value of money).

Section 301.9100-3(c)(1)(ii) provides that 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 that would have been 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.

Based on the facts and information submitted and the representations made, we conclude that Taxpayer and Sole Member have acted reasonably and in good faith, and that the granting of relief would not prejudice the interests of the Government. Taxpayer has satisfied the requirements of the regulations for the granting of relief. Accordingly, Taxpayer's Section 168(h)(6) Election, filed on Date 6, is considered timely filed.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, if Taxpayer files its returns electronically, it may satisfy this requirement by

attaching a statement to the return that provides the date and control number of the letter ruling.

This ruling is based upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. 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) 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.

Sincerely,

Sue-Jean Kim  
Senior Technician Reviewer  
Office of Associate Chief Counsel  
(Income Tax and Accounting)

Cc: