Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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PLR-110211-24

In Re:

Date:
September 27, 2024

LEGEND:

Taxpayer =

Tenant =

Property =

State =

Year X =

Date =

Dear :

This letter responds to your letter dated May 23, 2024, and subsequent correspondence, submitted on behalf of Taxpayer requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations for Taxpayer to make the election under § 1.48-4 of the Income Tax Regulations for Year X.

FACTS

According to the information submitted and representations made, Taxpayer, a limited liability company organized under the laws of State, owns Property. Taxpayer rehabilitated Property in a manner that qualified for the rehabilitation credit under section 47 of the Internal Revenue Code ("Code"). Tenant, a limited liability organized under the laws of State, leases Property from Taxpayer.

On Date, Taxpayer and Tenant entered into an agreement to pass through Taxpayer's qualified rehabilitation expenditures (QREs) relating to Property to Tenant. The agreement required Taxpayer to file an election pursuant to § 1.48-4 on or before the due date (including extensions) of Taxpayer's federal income tax return for the taxable year based on the date Property was placed in service. Taxpayer placed Property in service in Year X. However, Taxpayer failed to timely make the election for Year X, due to inadvertence.

Neither Taxpayer nor Tenant claimed a rehabilitation credit based on the QREs for Property placed in service in Year X. Further, Taxpayer has not made an election under section 47(d)(5).

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 section 46. The rehabilitation credit is a component of the section 46 investment credit.

Section 47(a)(1) provides for the purposes of section 46, for any taxable year during the 5-year period beginning in the taxable year in which a qualified rehabilitation building is placed in service, the rehabilitation credit for such year is an amount equal to the ratable share of such year.

Section 47(a)(2) defines the ratable share for any taxable year during the 5-year period described in section 47(a)(1) as an amount equal to 20 percent of the qualified rehabilitation expenditures with respect to any qualified rehabilitation building, as allocated ratably to each year during the 5-year period.

Section 47(b) provides that qualified rehabilitation expenditures with respect to any qualified rehabilitation building are taken into account for the taxable year in which such qualified rehabilitated building is placed in service.

Section 50(d)(5) makes applicable rules similar to the rules of former section 48(d) (relating to certain leased properties) as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990. Under former section 48(d)(1), a person who is a lessor of property may (at such time, in such manner, and subject to the conditions as are provided by regulations prescribed by the Secretary) elect with respect to any new section 38 property (other than property described in former section 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 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 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 facts and the representations submitted, 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 X. 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 X, 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, no opinion is expressed concerning the federal tax consequences of the facts described above under any provisions of the Code. In particular, no opinion is expressed on whether Taxpayer's rehabilitation expenditures with respect to Property are qualified rehabilitation expenditures under section 47, whether Taxpayer's rehabilitation of Property otherwise meets the requirements under section 47, or on the applicability of the amendments to section 47 by Pub. L. 115-97, Sec. 13402. Further, no opinion is expressed 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,

Holly Porter
Associate Chief Counsel
(Passthroughs and Special Industries)

By: _____
Barbara J. Campbell
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures:
Copy of this letter
Copy for section 6110 purposes

Cc: