

Internal Revenue Service

Number: **201952005**
Release Date: 12/27/2019
Index Number: 9100.04-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
 , ID No.

Telephone Number:

Refer Reply To:
CC:ITA:4
PLR-109642-19
Date:
October 01, 2019

TY:

Legend

Taxpayer =
Exempt Organization =
Partnership =
Investment Limited Partner =
a =
b =
Special Limited Partner =
Third Limited Partner =
c =
Limited Partnership Agreement =

Year 1 =

Dear

This letter responds to a request, dated April 13, 2019, for a private letter ruling granting an extension of time to make an election under § 168(h)(6)(F)(ii) of the Internal Revenue Code (Code) to Taxpayer, a tax-exempt controlled entity under § 168(h)(6)(F)(iii).

FACTS

Taxpayer, a C corporation, uses the calendar year as its taxable year and the accrual

method of accounting. Taxpayer is wholly owned by Exempt Organization, a tax-exempt entity. Taxpayer is the general partner of the Partnership, which was formed to acquire, renovate, own, and operate a multi-family property for elderly persons so that the owners would qualify for the low-income housing credit under § 42 of the Code.

Taxpayer owns *a* percent of the Partnership. Investment Limited Partner owns *b* percent of the Partnership, Special Limited Partner has no ownership interest, and Third Limited Partner owns *c* percent of the Partnership. Upon the final sale and settlement of liabilities of the Partnership, the Partnership will distribute the cash proceeds to the Investment Limited Partner, the Taxpayer, and the Third Limited Partner according to an allocation that varies from the ownership interests of the parties.

Under § 6.16.19 of the Limited Partnership Agreement, Taxpayer agreed to make the election under § 168(h)(6)(F)(ii) of the Code to not be treated as a tax-exempt entity.

Taxpayer should have made its election under § 168(h)(6)(F)(ii) on a timely-filed return for Year 1, but due to a lack of communication, Taxpayer failed to make a timely election. However, from the materials submitted, it is clear that Taxpayer at all times intended to make the election under § 168(h)(6)(F)(ii). Upon discovering its failure, Taxpayer promptly sought an extension of time in which to file the election.

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) 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 generally 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 Exempt Organization owns more than 50 percent in value of Taxpayer'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 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) 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 Service will not ordinarily grant relief.

Section 301.9100-3(c) of the Regulations provides that the 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's failure to make the election on its original return for Year 1 was inadvertent, and that Taxpayer is not using hindsight in requesting relief. Moreover, Taxpayer requested relief before the failure to make the election was discovered by the Service. Finally, Taxpayer 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. Accordingly, Taxpayer is treated as if it made a timely election under § 168(h)(6)(F)(ii), provided it attaches a copy of this letter to the next return it files.

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.

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.

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.

Enclosed is a copy of the letter showing the deletions proposed to be made when it is disclosed under § 6110. If you have any questions concerning this matter, please contact the individual whose name and telephone number appear at the beginning of the letter.

In accordance with the provisions of a power of attorney on file with this office, a copy of this letter is being sent to two of Taxpayer's authorized representatives.

Sincerely,

Stephen J. Toomey
Senior Counsel
Office of Chief Counsel
(Income Tax & Accounting)

Enclosure