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Date:
July 22, 2019

Re: Request for Private Letter Ruling under Section 168(g)(4)(G)

Legend

Taxpayer	=
State	=
Date1	=
Date2	=
Year	=
Location	=
Possession	=
A	=
B	=
Sponsor	=
Project Company	=

Dear :

This letter responds to a letter dated December 13, 2018, and additional correspondence, submitted by Taxpayer requesting a private letter ruling under § 50(b)(1)(B) and § 168(g)(4)(G) of the Internal Revenue Code with regard to a solar photovoltaic generation facility to be constructed in Location, which is in Possession (the "Solar Farm"). Subsequently, Taxpayer withdrew its ruling request under § 50(b)(1)(B).

Taxpayer represents that the facts are as follows:

Taxpayer is a single member limited liability company organized on Date1, under the laws of State. Taxpayer currently is a disregarded entity for federal income tax purposes.

The sole member of Taxpayer is Sponsor, a limited liability company organized under the laws of State on Date1. Sponsor has elected to be classified as an association subject to federal income tax as a corporation under § 301.7701-3(a) of the Income Tax Regulations. A and B own all of the membership interests of Sponsor.

The Solar Farm will be owned by Project Company, a single member limited liability company organized under the laws of Possession on Date2. The sole member of Project Company is and will be Taxpayer. Project Company is and will be a disregarded entity for federal income tax purposes.

The Solar Farm will include tangible property that will be subject to a depreciation allowance pursuant to § 168 (the "Depreciable Property"). None of the Depreciable Property will be tax-exempt use property or tax-exempt bond financed property under § 168(g). At no time will the Solar Farm be used for lodging, by a tax-exempt organization described in § 50(b)(3), or by governments or foreign persons. The Solar Farm is expected to be placed in service and begin commercial operations in Year.

During the current year and after the issuance of this letter ruling, two domestic corporations will acquire membership interests in Taxpayer and, as a result, Taxpayer will convert from a disregarded entity to a partnership for federal tax purposes. A and B also are currently in the process of soliciting an investment from one or more third parties (investors) to finance the construction and operation of the Solar Farm, and to purchase membership interests in Taxpayer before the Solar Farm is placed in service. The Depreciable Property will be treated as held by a partnership for federal tax purposes. No member of the partnership will be a tax-exempt entity within the meaning of § 168(h)(2).

During the period beginning on the date that the first depreciable asset of the Solar Farm is placed in service and ending on the date that the last depreciable asset of the Solar Farm is placed in service, (i) all of the Solar Farm's beneficial owners, either directly or through entities classified as disregarded entities or partnerships for federal income tax purposes, will be citizens of the United States or domestic corporations; (ii) none of these beneficial owners who are United States citizens are entitled to the benefits of § 931 or § 933; and (iii) none of these beneficial owners that are domestic corporations will have made an election under former § 936.

During the period beginning on the date that the Solar Farm's first depreciable asset that is eligible for the energy credit for federal income tax purposes, is placed in service and ending on the last day of the recovery period under § 168(c), as determined by taking into account the applicable convention under § 168(d), for the Solar Farm's last depreciable asset placed in service that is eligible for the energy credit for federal income tax purposes (or, if later, the date that is five years from the date the Solar Farm's last depreciable asset that is eligible for the energy credit for federal income tax

purposes, is placed in service), (i) all of the Solar Farm's beneficial owners, either directly or through entities classified as disregarded entities or partnerships for federal income tax purposes, will be citizens of the United States or domestic corporations; (ii) none of these beneficial owners who are United States citizens are entitled to the benefits of § 931 or § 933; and (iii) none of these beneficial owners that are domestic corporations will have made an election under former § 936.

During the period beginning on the date that the Solar Farm's first depreciable asset that may not be eligible as energy property under § 48 is placed in service and ending on the last day of the recovery period under § 168(c), as determined by taking into account the applicable convention under § 168(d), for the Solar Farm's last depreciable asset placed in service that is not eligible for the energy credit for federal income tax purposes (or, if later, the last day of the recovery period under § 168(c), as determined by taking into account the applicable convention under § 168(d), for the Solar Farm's depreciable asset with the longest recovery period under § 168(c) that is placed in service and is not eligible for the energy credit for federal income tax purposes), (i) all of the Solar Farm's beneficial owners, either directly or through entities classified as disregarded entities or partnerships for federal income tax purposes, will be citizens of the United States or domestic corporations; (ii) none of these beneficial owners who are United States citizens are entitled to the benefits of § 931 or § 933; and (iii) none of these beneficial owners that are domestic corporations will have made an election under former § 936.

RULING REQUESTED

Taxpayer requests the following ruling:

Provided Taxpayer is a domestic partnership where all of its partners are domestic corporations (other than a corporation which has an election in effect under section 936) or are United States citizens that are not entitled to the benefits of section 931 or 933, the Depreciable Property is property described in § 168(g)(4)(G) and, thus, the Depreciable Property will not be treated as property which is used predominantly outside the United States within the meaning of § 168(g)(4).

LAW AND ANALYSIS

Section 168(g)(1)(A) provides that any tangible property used predominantly outside the United States during the taxable year must be determined under the alternative depreciation system of § 168(g).

Section 168(g)(4) lists exceptions to § 168(g)(1)(A) for certain property used outside the United States. Section 168(g)(4)(G) provides that property will not be treated as used predominantly outside the United States if the property is owned by a domestic corporation (other than a corporation which has an election in effect under §

936) or by a United States citizen (other than a citizen entitled to the benefits of § 931 or 933) and which is used predominantly in a possession of the United States by such a corporation or such a citizen, or by a corporation created or organized in, or under the law of, a possession of the United States.

The background of § 168(g)(4) provides insight in determining whether § 168(g)(4)(G) applies to domestic partnerships where all of the partners are domestic corporations (none of which has an election in effect under § 936) or United States citizens (none of whom is entitled to the benefits of § 931 or 933). The rules in § 168(g)(4) are derived from former § 48(a)(2)(B). Prior to 1990, § 168(g)(4) provided, in relevant part, that for purposes of § 168(g)(4), rules similar to the rules under § 48(a)(2) (including the exceptions contained in § 48(a)(2)(B)) shall apply in determining whether property is used predominantly outside the United States. When former § 48 was repealed as a "deadwood" provision in 1990, § 168(g)(4) was amended to incorporate the enumerated exceptions contained in former § 48(a)(2)(B). See § 11813 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508 (the "Act"). The language of § 168(g)(4)(G) is the same as the language in former § 48(a)(2)(B)(vii) prior to its repeal in 1990.

The Senate Finance Committee stated the following comment, in relevant part, on the reason for the enactment of former § 48(a)(2)(B)(vii):

> "Your committee's amendment extends the application of the investment credit provision to property used in a possession by a U.S. person or by a corporation organized in a possession provided the property would otherwise have qualified for the investment credit. This rule is not extended if the property is owned or used in the possession by U.S. persons who are presently exempt from U.S. tax due to the application of the special provisions of the Code which exempt U.S. persons who derive substantially all of their income from a U.S. possession (sections 931, 932, 933, 934(b))." S. Rep. No. 1707, 89th Cong., 2d Sess. 58 (1966), 1966-2 C.B. 1100.

Based on this Senate Report, it appears that Congress intended former § 48(a)(2)(B)(vii) to apply to United States persons even though the literal language of former § 48(a)(2)(B)(vii) applied to United States citizens or domestic corporations. When former § 48(a)(2)(B)(vii) was enacted in 1966, the term "United States person" was defined under § 7701(a)(30) of the 1954 Code as meaning: (A) a citizen or resident of the United States, (B) a domestic partnership, (C) a domestic corporation, and (D) any estate or trust (other than a foreign estate or foreign trust within the meaning of § 7701(a)(31) of the 1954 Code).

Similar to former § 48(a)(2)(B)(vii), the literal wording of § 168(g)(4)(G) applies to domestic corporations or United States citizens, but not to domestic partnerships. However, the repeal of the "deadwood" provisions and the amendment to § 168(g)(4) by

§ 11813 of the Act were not intended to be substantive changes in the tax law. H.R. Rep. No. 101-894, 101st Cong., 2d Sess. (Oct. 17, 1990).

Section 7701(a)(30) defines the term "United States person" as: (A) a citizen or resident of the United States, (B) a domestic partnership, (c) a domestic corporation, (D) any estate (other than a foreign estate, within the meaning of § 7701(a)(31)), and (E) any trust if a court within the United States is able to exercise primary supervision over the administration of the trust, and one or more United States persons have the authority to control all substantial decisions of the trust.

In light of the legislative history of § 168(g)(4) and former § 48(a)(2)(B)(vii), we believe that § 168(g)(4)(G) is intended to apply to a domestic partnership where all of its partners are domestic corporations that do not have an election in effect under § 936 or are United States citizens that are not entitled to the benefits of § 931 or 933.

In this case Taxpayer represents that the Solar Farm is in Location, which is in a possession of the United States.

Taxpayer also represents that:

1. During the period beginning on the date that the first depreciable asset of the Solar Farm is placed in service and ending on the date that the last depreciable asset of the Solar Farm is placed in service, (i) all of the Solar Farm's beneficial owners, either directly or through entities classified as disregarded entities or partnerships for federal income tax purposes, will be citizens of the United States or domestic corporations; (ii) none of these beneficial owners who are United States citizens are entitled to the benefits of § 931 or § 933; and (iii) none of these beneficial owners that are domestic corporations will have made an election under former § 936;

2. During the period beginning on the date that the Solar Farm's first depreciable asset that is eligible for the energy credit for federal income tax purposes, is placed in service and ending on the last day of the recovery period under § 168(c), as determined by taking into account the applicable convention under § 168(d), for the Solar Farm's last depreciable asset placed in service that is eligible for the energy credit for federal income tax purposes (or, if later, the date that is five years from the date the Solar Farm's last depreciable asset that is eligible for the energy credit for federal income tax purposes, is placed in service), (i) all of the Solar Farm's beneficial owners, either directly or through entities classified as disregarded entities or partnerships for federal income tax purposes, will be citizens of the United States or domestic corporations; (ii) none of these beneficial owners who are United States citizens are entitled to the benefits of § 931 or § 933; and (iii) none of these beneficial owners that are domestic corporations will have made an election under former § 936; and.

3. During the period beginning on the date that the Solar Farm's first depreciable asset that may not be eligible as energy property under § 48 is placed in service and ending on the last day of the recovery period under § 168(c), as determined by taking into account the applicable convention under § 168(d), for the Solar Farm's last depreciable asset placed in service that is not eligible for the energy credit for federal income tax purposes (or, if later, the last day of the recovery period under § 168(c), as determined by taking into account the applicable convention under § 168(d), for the Solar Farm's depreciable asset with the longest recovery period under § 168(c) that is placed in service and is not eligible for the energy credit for federal income tax purposes), (i) all of the Solar Farm's beneficial owners, either directly or through entities classified as disregarded entities or partnerships for federal income tax purposes, will be citizens of the United States or domestic corporations; (ii) none of these beneficial owners who are United States citizens are entitled to the benefits of § 931 or § 933; and (iii) none of these beneficial owners that are domestic corporations will have made an election under former § 936.

The preceding three representations made by Taxpayer are material representations.

Taxpayer further represents that when the Solar Farm is placed in service and begins commercial operations, Taxpayer will be classified as a partnership for federal tax purposes, and the Solar Farm will be treated as held by a partnership for federal income tax purposes. The representations made by Taxpayer in the preceding sentence are material representations.

CONCLUSION

Based solely on Taxpayer's representations and the relevant law and analysis set forth above, we conclude that:

Provided Taxpayer is a valid partnership for federal tax purposes, each member of Taxpayer is a valid partner of Taxpayer, and Taxpayer is a domestic partnership where all of its partners are domestic corporations (other than a corporation which has an election in effect under § 936) or are United States citizens that are not entitled to the benefits of § 931 or 933, the Depreciable Property is property described in § 168(g)(4)(G) and, thus, the Depreciable Property will not be treated as property that is used predominantly outside the United States within the meaning of § 168(g)(4).

Except as specifically set forth above, no opinion is expressed or implied concerning the tax consequences of the facts described above under any other provisions of the Code (including subsections of § 168 other than § 168(g)(4)(G)). Specifically, no opinion is expressed or implied on whether: (1) Taxpayer is, in substance, a valid (bona fide) partnership for federal tax purposes on or after two or more parties acquire membership interests in Taxpayer; (2) any member of Taxpayer is,

in substance, a valid (bona fide) partner of Taxpayer for federal tax purposes on or after two or more parties acquire membership interests in Taxpayer; or (3) the Solar Farm and any of its components are described in § 48(a)(3)(A) or § 168(e)(3)(B)(vi)(I). Further, other than the ownership changes represented by Taxpayer that are described in this letter ruling, no opinion is expressed or implied concerning the tax consequences of future ownership changes of Taxpayer under § 168(g)(4)(G).

In accordance with the power of attorney, we are sending a copy of this letter ruling to Taxpayer's authorized representatives.

This letter ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Kathleen Reed

Kathleen Reed
Branch Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures (2):
copy of this letter
copy for section 6110 purposes

cc: