

Internal Revenue Service

Number: **201935008**

Release Date: 8/30/2019

Index Number: 9100.00-00, 9100.04-00,
9100.22-00, 168.00-00

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:04

PLR-132397-18

Date:

May 30, 2019

Legend

Date 1 =

Taxpayer =

State =

Date 2 =

Exempt Organization =

Owner =

Building =

Address =

Investor =

X =

Y =

Date 3 =

Year 1 =

Date 4 =

Dear _____ :

This letter responds to a request for a private letter ruling filed on Date 1 on behalf of Taxpayer, a tax-exempt controlled entity under § 168(h)(6)(F)(iii) of the Internal Revenue Code (Code), seeking an extension of time to make an election under § 168(h)(6)(F)(ii).

Facts

Based on the information submitted and representations made, the relevant facts are as follows.

On Date 2, Taxpayer was organized under the laws of State as a limited liability company. Taxpayer, which has elected to be treated as an association taxable as a corporation for federal income tax purposes, uses the accrual method of accounting and the calendar year as its taxable year. Taxpayer is wholly owned by Exempt Organization. Because Exempt Organization owns more than 50 percent in value of the stock of Taxpayer, Taxpayer is a tax-exempt controlled entity within the meaning of § 168(h)(6)(F)(iii).

Exempt Organization is a non-profit private foundation organized under the laws of State and has received a letter determining it to be a § 501(c)(3) organization. Exempt Organization was formed to preserve Building and to reuse Building for various civic purposes. Building is located in State at Address.

Exempt Organization formed Taxpayer to act as the managing member of Owner, a limited liability company taxed as a partnership for federal tax purposes. Owner is engaged in the rehabilitation of Building, a certified historic structure. The rehabilitation of Building was intended to qualify for the § 47 rehabilitation tax credit. Owner is owed X percent by Taxpayer and Y percent by Investor, a taxable entity. Owner began rehabilitation of Building on Date 3 and placed Building in service in Year 1.

Exempt Organization hired a tax preparer to prepare partnership tax returns for Taxpayer for the year ending Date 4. The tax preparer was engaged after the original filing deadline due to a miscommunication and Taxpayer's unfamiliarity with the filing requirements. Accordingly, Taxpayer was unable to include a timely filed election under § 168(h)(6)(F)(ii) not to be treated as a tax-exempt entity. The affidavits and other materials submitted state that Taxpayer intended to make the § 168(h)(6)(F)(ii) election.

Upon discovering the miscommunication, Taxpayer submitted a private letter ruling request seeking an extension of time under § 301.9100-3 of the Procedure and Administration Regulations (Regulations) to be treated as a tax-exempt controlled entity under § 168(h)(6)(F)(ii).

Applicable Law

Under § 47(a)(2), a rehabilitation credit is provided for 20 percent of the qualified rehabilitation expenditures with respect to any certified historic structure.

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 is treated as tax-exempt use property. Section 168(h)(6)(F)(i) provides generally that any tax-exempt controlled entity is treated as a tax-exempt entity for purposes of § 168(h)(5) and (6).

Under § 168(h)(6)(F)(ii), a tax-exempt controlled entity can elect not to 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 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(c) 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.

Section 301.9100-1 through § 301.9100-3 provides 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) 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), 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) 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.

Analysis

Taxpayer's election is a regulatory election, as defined in § 301.9100-1(b), because the due date of the election under § 168(h)(6)(F)(ii) is prescribed in the Regulations under § 301.9100-7T(a)(2)(i). The Commissioner has the authority under §§ 301.9100-1 and 301.9100-3 to grant an extension of time to file a late regulatory election.

The information provided and representations made by Taxpayer establish that the Taxpayer acted reasonably and in good faith. The Taxpayer has represented that it intended to make the § 168(h)(6)(F)(ii) election, that its failure to make the election on a timely filed original return was inadvertent, and that Taxpayer reasonably relied on tax professionals. Taxpayer is not seeking to alter a return position for which an accuracy related penalty has been or could be imposed under § 6662 at the time relief is requested. Taxpayer did not affirmatively choose not to make the election after having been informed in all material respects of the required election and related tax consequences. Taxpayer is not using hindsight in requesting relief.

Further, based on the information provided and representations made by Taxpayer, granting an extension will not prejudice the interests of the government. Taxpayer will not have a lower tax liability in the aggregate for all taxable years to which the election applies at this time than Taxpayer would have had if the election had been timely made. In addition, the taxable year in which the regulatory election should have been made and any taxable years that would have been affected by the election had it been timely made will not be closed by the period of limitations on assessment under § 6501(a) before Taxpayer's receipt of the ruling granting an extension of time to make a late election.

Conclusion

Based solely on the facts as represented and the applicable law, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been met. Taxpayer is granted an extension of 45 days from the date of this ruling to file the election statement with the appropriate service center containing the information required in § 301.9100-7T(a)(3). Taxpayer must attach a copy of this letter to the election statement.

A copy of this ruling should be attached to Taxpayer's federal tax returns for the tax years affected. 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.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer, accompanied by a penalty of perjury statements executed by an appropriate party, and on other affidavits. Although this office has not verified any of the material submitted or facts assumed in support of the request for ruling, they are 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(j)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to Taxpayer's authorized representative.

Sincerely,

Ronald J. Goldstein
Senior Technical Reviewer, Branch 4
Associate Chief Counsel
(Income Tax & Accounting)

cc: