Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

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Refer Reply To:
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PLR-126521-08

Date:
August 07, 2008

Legend

Taxpayer	=
State N	=
A	=
B	=
C	=
D	=
Tax Year	=
Project	=
Accountant	=

Dear :

This is in response to your letter of June 4, 2008, requesting, on behalf of the above-named Taxpayer, an extension of time under sections 301.9100-1 and 301.9100-3 of the Regulations on Procedure and Administration to file an election under § 168(h)(6)(F)(ii) of the Internal Revenue Code (the "Election"). The material information submitted for consideration is summarized below.

Taxpayer is a corporation incorporated in State N. Taxpayer is a wholly-owned subsidiary of A, which is a non-profit corporation that is a tax-exempt entity under § 501(c)(3). Taxpayer was created by A to be the property owner/landlord of Project. Taxpayer was responsible for certain rehabilitation work on several buildings within Project. The rehabilitation was financed by loans obtained from a community development entity formed in order to obtain the New Markets Tax Credit under § 45D of the Code. C is also wholly-owned by A.

Taxpayer entered into a lease with B, a limited partnership formed under the laws of State N that is owned by the .01 percent general partner, C, and the 99.99 percent limited partner, D. B was formed to acquire a leasehold interest in certain rehabilitated buildings within Project owned by the Taxpayer and to operate such buildings on a day to day basis in order to obtain long term appreciation, cash and return of capital. It has been represented that Project was placed on the National Register of Historic Places. Final approval by the National Park Service of the rehabilitation of the buildings at issue in Project as "certified historic structures" for purposes of the rehabilitation tax credit is pending.

The parties engaged Accountant to compile financial projections for this transaction and to discuss the structure of the transaction. The parties decided to lease Project to B for 19 years pursuant to a net lease that permitted Taxpayer to make an election under § 50D of the Code to pass rehabilitation tax credits through to B. In order to pass the rehabilitation tax credits through to B, the property owner must be a taxable entity. Since Taxpayer is a wholly-owned subsidiary of A, Taxpayer is a tax-exempt controlled entity within the meaning of § 168(h)(6)(F)(iii). However, in order to make the election under § 50D, Taxpayer may elect, under § 168(h)(6)(F)(ii), to not be treated as a tax-exempt controlled entity for purposes of § 168(h)(6). All parties to the transaction agreed to memorialize the requirement that Taxpayer make the § 168(h)(6)(F)(ii) election in B's partnership agreement. The election was necessary so that the alternate depreciation system under § 168(g) would not be applied to the property and to enable the rehabilitation expenditures to give rise to the rehabilitation tax credit. B's partnership agreement requires that the § 168(h)(6)(F)(ii) election be made and that it be verified by Accountants on the first tax return of the Taxpayer, as landlord.

Accountant was engaged by Taxpayer and B to prepare its Federal and State tax returns for the tax year. Based upon the information submitted, Taxpayer intended to make an election under § 168(h)(6)(F)(ii) on a timely filed federal income tax return for its first tax year ended December 31, . However, Accountant made a clerical error when it prepared Taxpayer's Form 1120 income tax return by not attaching to that return the Taxpayer's election under § 168(h)(6)(F)(ii) to not be treated as a tax-exempt controlled entity. It is represented that this error was not the result of a misinterpretation of the rules or regulations under the statute. It is further represented that given Accountant's reputation and involvement in the transaction, it is reasonable for Taxpayer to believe that Accountant was competent to carry out the election. Due to Accountant's clerical error, the election under § 168(h)(6)(F)(ii) was not timely made. The Taxpayer is seeking relief under §§ 301.9100-1 and 301.9100-3 for failure to make a timely election.

Section 168(h)(6)(A) provides that, for purposes of § 168(h), if (1) any property which is not tax-exempt use property is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, and (2) any allocation to the tax-exempt entity of partnership items 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 that, for purposes of § 168(h)(6), any tax-exempt controlled entity shall be treated as a tax-exempt entity.

Section 168(h)(6)(F)(ii) provides that, for purposes of § 168(h)(6), a tax-exempt controlled entity may 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.

Section 301.9100-7T(a)(2)(i) requires elections under § 168(h)(6)(F)(ii) to be made by the due date of the tax return for the first taxable year for which the election is to be effective. Therefore, the Election is a regulatory election under § 301.9100-1(b).

Under § 301.9100-1(c) and § 301.9100-3(a), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election under all subtitles of the Internal Revenue Code, except subtitles E, G, H, and I, provided the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Based on the facts and information submitted, including the affidavits submitted and representations made, we conclude that Taxpayer acted reasonably and in good faith and that granting relief will not prejudice the interests of the government. Accordingly, the requirements of the regulations for granting relief in this case have been satisfied and we grant an extension of time, until 60 days from the date of issuance of this letter, for Taxpayer to file the Election.

Taxpayer must file an amended federal income tax return for its tax year ending on December 31, , and attach thereto the Election and information set forth in § 301.9100-7T(a)(3). Taxpayer should also attach a copy of this letter to the amended return. In addition, pursuant to § 301.9100-7T(a)(3)(ii), a copy of the Election statement should also be attached to the federal income tax returns of each of the tax-exempt shareholders or beneficiaries of Taxpayer.

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(s) 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 representatives.

The rulings contained in this letter are based upon information and representations submitted by the 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 rulings, it is subject to verification on examination.

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.

Sincerely,

/s/ William A. Jackson

William A. Jackson
Branch Chief, Branch 5
Office of Chief Counsel
(Income Tax & Accounting)

Enclosure (1)
Copy for section 6110 purposes