Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:
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Telephone Number:

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PLR-135587-11
Date:
September 12, 2011

Legend

Taxpayer =
Development Corp =
Partnership =
Organization =
Investor Member =
Project =
Taxable Year =
Agreement =
Date A =

Dear

This refers to Taxpayer's request for an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations 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 wholly-owned subsidiary of Development Corp, a Not-for-Profit corporation. Development Corp is wholly-owned by Organization, a § 501(c)(3) organization. Taxpayer, which owns .01 percent of Partnership, was created by Development Corp to act as the managing member of Partnership. Investor Member owns the remaining 99.99 percent interest in Partnership. Partnership was formed to raise funds for Project and to develop and operate Project. Development Corp was formed to assist in the development and operation of Project.

Taxpayer is a "tax-exempt controlled entity" within the meaning of §168(h)(6)(F)(iii). Under the Agreement, Taxpayer was required to make an election under § 168(h)(6)(F)(ii) to be treated as a taxable entity. The election was to be effective for

Taxable Year, the year the Project was placed in service. In fact, Investor Member's capital contributions were predicated on Taxpayer making an election under § 168(h)(6)(F)(ii).

Due to an oversight, Taxpayer's § 168(h)(6)(F)(ii) election was attached to Partnership's Taxable Year tax return rather than Taxpayer's. Taxpayer, assuming it had properly made the election, submitted its Taxable Year and subsequent year returns as if it had properly made the election. Soon after it discovered the mistake, Taxpayer filed this request for permission to make a late election.

Section 168(h)(6)(A) provides that, for purposes of § 168(h), if (1) any property that is not tax-exempt use property is owned by a partnership with 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 the tax-exempt entity's proportionate share of such property is 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 is 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, elections under § 168(h)(6)(F)(ii) are regulatory 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, we conclude that Taxpayer acted reasonably and in good faith and 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 for Taxpayer to file its § 168(h)(6)(F)(ii) election.

Taxpayer must file an amended federal income tax return for Taxable Year by Date A, and attach to the amended return the § 168(h)(6)(F)(ii) election and the information set forth in § 301.9100-7T(a)(3). Taxpayer must also attach a copy of this letter to the 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 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 representative.

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.

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.

Sincerely,

Michael J. Montemurro
Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: