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Date:  
August 21, 2015

TY:

Legend:

Date 1 =

Taxpayer =

Tax Exempt Entity =

Lessee =

Landlord =

Investor =

Building =

A% =

B% =

C% =

D% =

Year A =

Year B =

Year C =

Accounting Firm 1 =

Accounting Firm 2 =

Dear

This responds to a letter ruling request dated February 4, 2015, submitted on behalf of Taxpayer. Taxpayer requests an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election under § 168(h)(6)(F)(ii)<sup>1</sup> effective for the taxable year ended Date 1.

Taxpayer is an LLC that has elected to be taxed as a corporation for federal income tax purposes. Taxpayer is owned entirely by Tax Exempt Entity, which is a nonprofit corporation exempt from taxation under § 501(c)(3). Taxpayer is a general partner with a A% ownership interest in Lessee, a limited partnership. Lessee has a limited partner, Investor, which has a B% ownership interest in Lessee.

Taxpayer also is a general partner with a C% ownership interest in Landlord, a limited partnership. Lessee is a limited partner with a D% ownership interest in Landlord. Landlord has a leasehold interest in Building which Landlord leases to Lessee. Landlord, with the aid of a developer, incurred expenses to rehabilitate Building. Building was placed in service in Year B. Taxpayer represents that had a timely election been made, Landlord would be entitled to § 47 rehabilitation credits with respect to the expenses incurred to rehabilitate Building.

Pursuant to an amended limited partnership agreement (the Agreement) governing Lessee, entered into by Taxpayer and Investor in Year A, Taxpayer was obligated to take all actions necessary to cause the pass through of the § 47 rehabilitation credits to Lessee. Under the Agreement Taxpayer represented that it either had made the election provided for under § 168(h)(6)(F)(ii) or did not constitute a tax-exempt entity as defined in § 168(h). Because Taxpayer is owned by a tax-exempt entity, the only way for Taxpayer to satisfy that representation was to timely file an election under § 168(h)(6)(F)(ii). In addition, under the Agreement Taxpayer is obligated to take all actions necessary to ensure that neither the Building nor the land on which it is situated constitutes tax exempt use property within the meaning of § 168.

Taxpayer hired and relied on Accounting Firm 1 to prepare its Year B federal income tax return. Accounting Firm 1 failed to prepare the § 168(h)(6)(F)(ii) election statement when it prepared the tax return. Taxpayer hired Accounting Firm 2 to prepare its Year C federal income tax return. In conducting due diligence in preparing Taxpayer's Year C federal income tax return, Accounting Firm 2 discovered that the § 168(h)(6)(F)(ii)

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<sup>1</sup> Unless provided otherwise, references to sections refer to sections of the Internal Revenue Code of 1986.

election statement was not included in Taxpayer's Year B federal income tax return. Upon discovering this omission, Accounting Firm 2 prepared this request for an extension of time to make the § 168(h)(6)(F)(ii) election. Accounting Firm 1 has included an affidavit with this ruling request indicating that the failure to prepare a timely election was unintentional.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make certain regulatory elections. Section 301.9100-1(b) defines a "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic changes covered under § 301.9100-2) will be granted when the taxpayer provides the evidence (including affidavits described in the regulations) to establish 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.

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 reasonable 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.

Section 301.9100-3(b)(3) provides that 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 (taking into account any qualified amended return filed within the meaning of § 1.6664-2(c)(3)) and the new position requires or permits a regulatory election for which relief is requested;

(ii) was informed in all material respects 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)(1) provides that the Commissioner 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. The interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

## ANALYSIS

Taxpayer's election is a regulatory election, as defined under § 301.9100-1(b), because the due date of the election is prescribed in the regulations under § 301.9100-7T(a)(1)-(2). That regulation requires Taxpayer to make the election by the due date (taking extensions into account) of the tax return for the first taxable year for which the election is to be effective. 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 and representations made by Taxpayer indicate that Taxpayer acted reasonably and in good faith when it failed to timely make the election. Furthermore, the grant of an extension to make the election will not prejudice the interests of the government.

Taxpayer has represented that when the ruling request was made, it had not been notified by the Service that Year B had been selected for examination. Taxpayer always intended to make the election. This is established by Taxpayer's representations and obligations under the Agreement. Taxpayer reasonably relied on

Accounting Firm 1 to prepare an election statement to be filed with Taxpayer's Year B federal income tax return. Taxpayer is not using hindsight in requesting relief. As noted above, the Agreement establishes that Taxpayer intended to make the election in Year A, the year prior to Year B for which the election is to apply. Moreover, Taxpayer sought an extension to make the election as soon as Accounting Firm 2 discovered the omission, which occurred during the preparation of Taxpayer's Year C federal income tax return.

Taxpayer has represented that granting the relief requested by Taxpayer will not result in Taxpayer or other relevant parties having a lower tax liability in the aggregate for all taxable years affected by the election than if the election had been timely made. The period of limitations on assessment under § 6501 for any of the relevant tax years affected by this ruling has not expired.

Finally, granting the relief sought by Taxpayer will not result in altering a return position for which an accuracy-related penalty under § 6662 has been or could have been imposed at the time Taxpayer requested the relief. Taxpayer has represented that the returns for all relevant parties were originally filed as if the election had been timely made.

#### RULING

Taxpayer is granted an extension of 45 days from the date of this ruling to file an election under § 168(h)(6)(F)(ii) effective for the taxable year ended Date 1. The election must be attached to Taxpayer's amended Year B federal income tax return and must include the information required by § 301.9100-7T(a)(3).

The rulings contained in this letter are based upon information and representations submitted by 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.

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) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any amended 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,

Seoyean Sharon Park  
Senior Technician Reviewer, Branch 5  
(Income Tax & Accounting)