Internal Revenue Service

Department of the Treasury
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Person To Contact:

ID No.

Telephone Number:

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August 10, 2021

LEGEND

Taxpayer	=
State	=
Exempt Organization	=
Partnership 1	=
Partnership 2	=
X	=
Y	=
Year 1	=
Year 2	=
Firm	=

Dear :

This letter responds to a request, dated April 15, 2021, for a private letter ruling granting an extension of time to make an election under § 168(h)(6)(F)(ii) of the Internal Revenue Code (Code) to Taxpayer, a tax-exempt controlled entity under § 168(h)(6)(F)(iii).

FACTS

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

Taxpayer is organized under the laws of State and is a limited liability company that elected to be treated as a corporation for Federal income tax purposes as of the date of formation. Taxpayer uses the accrual method of accounting and the calendar year as its taxable year. Taxpayer is wholly owned by Exempt Organization, a tax-exempt organization described in § 501(c)(3). 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).

Taxpayer owns X percentage of Partnership 1, a limited liability company organized under the laws of State and treated as a domestic partnership. Partnership 1 owns Y percentage of Partnership 2, which is a limited liability company organized under the laws of State treated as a domestic partnership. As a result, Taxpayer is an indirect owner of Partnership 2. Partnership 2 was formed to acquire, rehabilitate, and lease a vacant commercial property. The property was purchased in Year 1 and placed in service in Year 2.

Taxpayer filed an untimely Year 1 Federal income tax return, as Taxpayer inadvertently failed to obtain an extension of time to file its Year 1 federal income tax return. No § 168(h)(f)(F)(ii) election was filed with the Year 1 federal income tax return.

The Operating Agreement contemplates that Taxpayer would make the § 168(h)(f)(F)(ii) election. Affidavits from legal counsel for Taxpayer provide that Taxpayer was advised to make the § 168(h)(f)(F)(ii) election and that Taxpayer intended to follow this advice. A miscommunication between Taxpayer and Taxpayer's professional advisors resulted in the § 168(h)(f)(F)(ii) election being inadvertently omitted from the Taxpayer's Year 1 Federal income tax return.

Taxpayer should have made its election under § 168(h)(6)(F)(ii) on a timely-filed return for Year 1, but due to a lack of communication, Taxpayer failed to obtain an extension for its Taxable Year 1 Federal income tax return and failed to timely make the election. However, from the materials submitted, it is clear that Taxpayer at all times intended to make the election under § 168(h)(6)(F)(ii) and filed all applicable returns as if the election had been timely made. Upon discovering its failure to make the election

under § 168(h)(6)(F)(ii), Taxpayer promptly filed a request for relief under § 9100 to obtain an extension of time in which to make the election.

APPLICABLE LAW

Section 167(a) of the Internal Revenue Code provides generally for a depreciation deduction for property used in a trade or business. Under § 168(g), the alternative depreciation system must be used for any tax-exempt use property as defined in § 168(h).

Section 168(h)(6)(A) provides that, for purposes of § 168(h), if any property which (but for this subparagraph) 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)(6). Under § 168(h)(6)(F)(iii)(I), a corporation (without regard to that subparagraph and § 168(h)(2)(E)) constitutes a “tax-exempt controlled entity” if 50 percent or more (in value) of the corporation's stock is held by one or more tax-exempt entities (other than a foreign person or entity). In the case of tiered partnerships and other entities, § 168(h)(6)(E) applies similar rules. Under § 168(h)(6)(F)(ii), a tax-exempt controlled entity can elect not to be treated as a tax-exempt entity. Once made, the 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 Procedure and Administration Regulations, a § 168(h)(6)(F)(ii) election 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 301.9100-7T(a)(3)(i) provides that the § 168(h)(6)(F)(ii) election must be made by attaching a statement to the tax return for the taxable year for which the election is to be effective. Per § 301.9100-7T(a)(3)(ii), a copy of the election must also be attached to the income tax returns of the tax-exempt shareholders of the tax-exempt controlled entity.

Section 301.9100-1(c) provides that the Commissioner of Internal Revenue has the discretion to grant a reasonable extension of time to make a regulatory election. Per § 301.9100-1(b), the term “regulatory election” includes any election the due date for which is prescribed by a regulation. Because the due date of the § 168(h)(6)(F)(ii) election is prescribed in § 301.9100-7T, the § 168(h)(6)(F)(ii) election is a regulatory election.

The Service uses standards set forth in §§ 301.9100-1 through 301.9100-3 to determine whether to grant an extension of time to make a regulatory election. Under § 301.9100-3(a), the Service will grant requests for extensions of time for regulatory elections (other

than automatic extensions of time covered in § 301.9100-2) 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 is 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.

Per § 301.9100-3(b)(3), a taxpayer is considered to have not 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)(1) provides that the Service will grant a reasonable extension of time only when doing so will not prejudice the interests of the Government. Section 301.9100-3(c)(1)(i) states that 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. Under § 301.9100-3(c)(1)(ii), the interests of the Government may be prejudiced if the taxable year in which the regulatory election should have been made, or any taxable years 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

The representations made and information provided by Taxpayer establishes that Taxpayer acted reasonably and in good faith. Taxpayer has shown that it intended to make the § 168(h)(6)(F)(ii) election and would have but for the inadvertent mistake by

its tax professional on whom Taxpayer reasonably relied. In addition, Taxpayer has filed its returns and calculated its tax due as if the election had been timely made. Taxpayer requested this relief before failure to make the election was discovered by the Service. Taxpayer does not seek to alter a return position for which an accuracy-related penalty could be imposed under § 6662 at the time Taxpayer's request for relief. Taxpayer did not affirmatively choose not to make the § 168(h)(6)(F)(ii) election and is not using hindsight in requesting relief.

In addition, an extension of time granted to Taxpayer will not prejudice the interests of the Government. Based on representations made by the Taxpayer, granting the request for relief will not provide Taxpayer with a lower tax liability in the aggregate for all taxable years to which the election applies than Taxpayer would have had if the election was timely made. As such, granting an extension to make the § 168(h)(6)(F)(ii) election does not prejudice the interests of the Government.

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 and Taxpayer's § 168(h)(6)(F)(ii) election will be deemed timely as provided below. Taxpayer is granted an extension of 45 days from the date of this ruling to file the § 168(h)(6)(F)(ii) election statement with the appropriate service center containing the information required in § 301.9100-7T(a)(3). Taxpayer must attach a copy of this ruling letter to the election statement. In addition, a copy of this ruling letter should be attached to the next Federal tax return filed by Taxpayer. 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 statement executed by an appropriate party, and on other affidavits. This office has not verified any of the material submitted in support of the request for a ruling. However, as part of an examination process, the Service may verify the information, representations, and other data submitted.

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. Specifically, this ruling grants an extension of time to make a § 168(h)(6)(F)(ii) election; however, this ruling does not address whether taxpayer is eligible to make the election.

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.

Pursuant to the Form 2848, Power of Attorney and Declaration of Representation, on file, we are sending a copy of this letter to Taxpayer's authorized representative. This letter is being issued electronically in accordance with Rev. Proc. 2020-28, 2020-21 I.R.B. 859. A paper copy will not be mailed to Taxpayer.

Sincerely,

Ronald J. Goldstein
Senior Technician Reviewer, Branch 4
(Income Tax & Accounting)