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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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Date:
August 15, 2025

LEGEND

X =

Y =

Agreement =

Partnership =

Project =

State =

Tax Year =

Date 1 =

Date 2 =

Dear :

This letter responds to a letter dated November 22, 2024, and subsequent correspondence, submitted on behalf of X by its authorized representatives, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations for X (1) to file an election under § 301.7701-3 to be classified as an association taxable as a corporation and (2) to make an election under § 168(h)(6)(F)(ii) of the Internal Revenue Code ("Code") not to be treated as a tax-exempt controlled entity.

FACTS

The information submitted states that X was formed as a limited liability company under the laws of State on Date 1. Prior to Date 2, X was classified as a partnership for federal tax purposes. X represents that it intended to elect to change its classification from a partnership to an association taxable as a corporation for federal tax purposes effective Date 2. However, X failed to file Form 8832, Entity Classification Election, electing to be classified as an association taxable as a corporation for federal tax purposes effective Date 2.

Y, a tax-exempt entity described in § 501(c)(3), owns more than 50 percent of X. X is a general partner of Partnership. Partnership was formed to provide affordable housing and, in furtherance of such purpose, to acquire, rehabilitate, own, lease, and manage Project. Project is a qualified low-income housing project pursuant to § 42. Project was placed in service in Tax Year. Under § 14.29(ix) of Partnership's Agreement, X was required to make an election under § 168(h)(6)(F)(ii) not to be treated as a tax-exempt controlled entity for purposes of the tax-exempt use property rules ("§ 168(h)(6)(F)(ii) election"). To make the foregoing election, X was required to be an association taxable as a corporation effective Date 2.

X represents that it intended to make a § 168(h)(6)(F)(ii) election effective for Tax Year. However, because X was not classified as an association taxable as a corporation effective Date 2, X was not able to make the § 168(h)(6)(F)(ii) election on X's Form 1120, Corporation Income Tax Return, for Tax Year, despite filing such a statement.

LAW AND ANALYSIS

Section 167(a) provides generally for a depreciation deduction for property used in a trade or business. The depreciation deduction provided by § 167(a) for tangible property placed in service after 1986 generally is determined under § 168. Under § 168(g), the alternative depreciation system (rather than the general depreciation system provided under § 168(a)) 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 which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners and any allocation to the tax-exempt entity 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 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)(iii)(I), a "tax-exempt controlled entity" means any corporation (without regard to that subparagraph and § 168(h)(2)(E)) 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).

Under § 168(h)(6)(F)(ii), a tax-exempt controlled entity can elect not to be treated as a tax-exempt entity for purposes of § 168(h)(5) and (6). 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)(1), a § 168(h)(6)(F)(ii) election must be made in accordance with the rules provided in §§ 301.9100-7T(a)(2) and (3).

Under § 301.9100-7T(a)(2)(i), the § 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) provides the manner in which the § 168(h)(6)(F)(ii) election is made.

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership. Elections are necessary only when an eligible entity does not want to be classified under the default classification or when an eligible entity chooses to change its classification.

Section 301.7701-3(b)(1) provides that except as provided in § 301.7701-3(b)(3), unless the entity elects otherwise, a domestic eligible entity is (i) a partnership if it has two or more members; or (ii) disregarded as an entity separate from its owner if it has a single owner.

Section 301.7701-3(c)(1) provides, in part, that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b), or to change its classification, by filing Form 8832 with the service center designated on Form 8832. Section 301.7701-3(c)(1)(iii) provides that an election under § 301.7701-3(c)(1)(i) will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified on the election form. The date specified on Form 8832 cannot be more

than 75 days prior to the date on which the election is filed and cannot be more than 12 months after the date the election is filed.

Section 301.7701-3(g)(1)(i) provides that if an eligible entity classified as a partnership elects under § 301.7701-3(c)(1)(i) to be classified as an association, the partnership is deemed to contribute all of its assets and liabilities to the association in exchange for stock in the association, and immediately thereafter, the partnership liquidates by distributing the stock of the association to its partners.

Section 301.7701-3(g)(3)(i) provides that an election under § 301.7701-3(c)(1)(i) that changes the classification of an eligible entity for federal tax purposes is treated as occurring at the start of the day for which the election is effective.

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 the election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-1(b) defines the term “regulatory election” as including any election the due date for which is prescribed by a regulation. Because the due date of an election under § 168(h)(6)(F)(ii) is prescribed in § 301.9100-7T, that election is a regulatory election. In addition, because the due date of an entity classification election is prescribed in § 301.7701-3(c), that election is a regulatory election.

Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of the 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 professional failed to make, or advise the taxpayer to make, the election.

Under § 301.9100-3(b)(3), a taxpayer is deemed 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 the 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 the interests of the Government will not be prejudiced by the granting of the relief. Section 301.9100-3(c)(1)(i) provides 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 are ordinarily prejudiced if the taxable year in which the regulatory election should have been made, or any taxable year 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 § 301.9100-3.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, we grant X an extension of time of 120 days from the date of this letter to file Form 8832 with the appropriate service center to elect to be classified as an association taxable as a corporation for federal tax purposes effective Date 2. A copy of this letter should be attached to the Form 8832.

In addition, based solely on the facts as represented and the applicable law, we conclude that X has satisfied the requirements of §§ 301.9100-1 and 301.9100-3 for granting an extension of time to file its § 168(h)(6)(F)(ii) election. X acted reasonably and in good faith and the interests of the Government will not be prejudiced by the granting of relief under § 301.9100-3. As a result, X is granted an extension of time of 120 days from the date of this letter to file with the appropriate service center the § 168(h)(6)(F)(ii) election statement with its Form 1120 for Tax Year containing the information required in § 301.9100-7T(a)(3) for that election to be effective for Tax Year. X must attach a copy of this letter ruling to its § 168(h)(6)(F)(ii) election statement. Pursuant to § 301.9100-7T(a)(3)(ii), a copy of this letter and X's § 168(h)(6)(F)(ii) election statement must also be attached to the federal income tax returns of each of the tax-exempt shareholders or beneficiaries of X.

These rulings are contingent on X, within 120 days from the date of this letter, filing all required returns for all relevant years consistent with the requested relief granted in this letter. A copy of this letter should be attached to any such returns for the tax years affected. Alternatively, if X files its tax returns electronically, it may satisfy this requirement by attaching a statement to its returns that provides the date and control number of this letter ruling.

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In addition, § 301.9100-1(a) provides that the granting of an extension of time for making an election is not a determination that the taxpayer is otherwise eligible to make the election.

Further, we express no opinion concerning interest, additions to tax, additional amounts or penalties with respect to any taxable year that may be affected by these rulings. For example, we express or imply no opinion as to whether a taxpayer is entitled to relief from any penalty on the basis that the taxpayer had reasonable cause for failure to file timely any income tax or information returns.

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 requested rulings, it is subject to verification on examination.

These rulings are directed only to the taxpayer requesting them. Section 6110(k)(3) of the Code provides that they 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 X's authorized representatives.

Sincerely,

Associate Chief Counsel
(Passthroughs, Trusts, and Estates)

By: _____
Mary Beth Carchia
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs, Trusts, and Estates)

Enclosure:
Copy of this letter for § 6110 purposes

cc: