Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

Refer Reply To:
CC:PSI:B06 – PLR-166310-03
Date:
March 24, 2004

Re:

Taxpayers	=
Property	=
Company	=
A	=
B	=
C	=
D	=
E	=
F	=
G	=
H	=
I	=
J	=
K	=
L	=
M	=
N	=
O	=
P	=
SB/SE Official	=

Dear :

This letter responds to a letter dated , and supplemental correspondence, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations for Taxpayer to file an application for certification of historic status with the United States Department of Interior.

According to the information submitted, Taxpayers acquired Property in A. Taxpayers began rehabilitating the Property in B.

Taxpayers are the sole members of Company, an H limited liability company. Company was formed on M, and is classified as a partnership for federal tax purposes.

On N, before any portion of the Property had been placed in service, Taxpayers contributed the Property to Company as a capital contribution. Taxpayers never claimed any rehabilitation tax credits with respect to the Property for the period prior to the transfer of the Property to Company.

Company continued to rehabilitate the Property. In connection with the rehabilitation, Company filed a Historic Preservation Certification Application with the United States Department of Interior, National Park Service. The United States Department of Interior has determined that the Property contributes to the significance of the district and is a certified historic structure for purposes of rehabilitation. The Department of Interior has issued Company a preliminary certification for the rehabilitation of the Property.

The Property is being rehabilitated in stages. The rehabilitation is expected to be completed in C. The Property is being rehabilitated in a manner consistent with the approved application for historic preservation certification. The normal rehabilitation period for the Property within the meaning of section 47(d)(2)(A) of the Internal Revenue Code is more than two years. The Property is expected to qualify as a "qualified rehabilitated building," within the meaning of section 47, when the rehabilitation is completed and the entire building is placed in service.

For purposes of section 1.48-12(b)(2) of the Income Tax Regulations, the 60-month measuring period selected by Taxpayers commenced in O, and ends in P. At the beginning of this measuring period, the adjusted basis of the Property was F. Taxpayers incurred E of qualified progress expenditures for the D taxable year.

Company and Taxpayers engaged G, an H certified public accounting firm, to prepare Company's D federal partnership return and Taxpayers' D tax return and to advise them on matters related to the rehabilitation tax credit. Specifically, Company's and Taxpayers' returns were prepared by I of G.

I failed to advise Taxpayers of the progress expenditure election under section 47(d) or that, in order for them to claim the rehabilitation tax credit for the D tax year and subsequent years prior to the Property being placed in service, Taxpayers were required to elect the progress expenditure method on Taxpayers' D tax return. Nonetheless, I prepared Taxpayers' D tax return in a manner consistent with a valid election having been made. Based on I's advice and in accordance with the returns prepared by him, Taxpayers claimed a rehabilitation tax credit in the amount of J on their D tax return. The amount of rehabilitation tax credit claimed by Taxpayers on their D return was limited by the application of the passive activity credit rules of section 469.

Taxpayers subsequently engaged K, an H law firm, and tax partner L to advise them with respect to certain tax matters. L advised Taxpayers that in order to use the progress expenditure method under section 47(d), an election was required to have been made on Taxpayers' D tax return. Thus, Taxpayers submitted a request for an extension of time under §301.9100-3 on November 12, 2003.

LAW AND ANALYSIS

Generally, the investment credit for qualified rehabilitation expenditures is allowed in the taxable year in which the property attributable to the expenditure is placed in service. See §1.48-12(f)(2) of the regulations. However, section 47(d) permits taxpayers to elect to take qualified rehabilitation expenditures into account when paid or incurred, instead of when the rehabilitated property is placed in service. Section 1.46-5(o)(1) provides, in part, that in the case of property owned by a partnership, the progress expenditure election may not be made by the partnership but must be made at the partner level. The election will be effective as to that electing partner even if a related partner does not make the election. A progress expenditure election by a partner applies to all progress expenditure property of that person. Section 1.46-5(o)(2) provides that the election must be made on Form 3468 and filed with the original income tax return for the first taxable year to which the election will apply.

Section 47(d) applies to any building which is being rehabilitated by or for the taxpayer if (i) the normal rehabilitation period for such building is 2 years or more, and (ii) it is reasonable to expect that such building will be a qualified rehabilitated building in the hands of the taxpayer when it is placed in service.

Section 1.48-12(b)(1) provides that the term "qualified rehabilitated building" means any building and its structural components that, among other requirements, has been substantially rehabilitated within the meaning of §1.48-12(b)(2) for the taxable year. Section 1.48-12(b)(2)(v) provides that a building shall be treated as having been substantially rehabilitated for a taxable year only if the qualified rehabilitation expenditures incurred during any 60-month period selected by the taxpayer ending with or within the taxable year exceed the greater of (A) the adjusted basis of the building (and its structural components), or (B) $ 5,000.

Section 1.48-12(d)(7)(ii) provides that if the taxpayer fails to receive final certification of completed work prior to the date that is 30 months after the taxpayer filed the tax return upon which the credit was claimed, the taxpayer must submit a written statement to the District Director stating such fact prior to the last day of the 30th month, and the taxpayer shall be requested to consent to an agreement under section 6501(c)(4) extending the period of assessment for any tax relating to the time for which the credit was claimed.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I.

Section 301.9100-1(b) provides that the term "election" includes an application for relief in respect of tax.

Sections 301.9100-2 and 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. A request for relief under § 301.9100-3 will be granted when the taxpayer provides evidence 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.

CONCLUSIONS

Based solely on the facts and representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Taxpayers' application will be considered timely filed for purposes of §1.46-5(o)(2). A copy of this letter should be sent to the appropriate service center with a request that it be attached to Taxpayers' amended D tax return. A copy is enclosed for that purpose.

Except as specifically set forth above, we express no opinion concerning the federal income tax consequences of the facts described above under any other provisions of the Code. Moreover, we express no opinion on whether the Property was substantially rehabilitated in the D taxable year. See §1.48-12(b)(2).

Section 4 of Notice 2003-19, 2003-14 I.R.B. 703, provides that requests for extensions of the period of limitations under section 1.48-12(d)(7)(ii) should be mailed to the following address:

IRS
Tax Credit Unit
Drop 607
P.O. Box 245
Bensalem, PA 19020

In accordance with the power of attorney, we are sending copies of this letter to Taxpayers' authorized representative. We are also sending a copy of this letter to the SB/SE Official.

This ruling is directed only to the Taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

HEATHER C. MALOY

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):
copy of this letter
copy for section 6110 purposes