

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

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Date:
July 11, 2011

Legend

Taxpayer =
Fund =
Landlord =
Master Tenant =
Project =
City =

Dear

This refers to the 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.

The Fund was organized in 2006 to acquire, manage, lease, develop and redevelop hotel properties in select major North American markets and is owned by entities of which fifty percent or more are tax-exempt entities under § 501(c)(3). In early 2008, Fund acquired the Project located in City. The Fund intended to redevelop the Project in a manner that would qualify it for a credit under § 47 of the Internal Revenue Code. The Fund formed Taxpayer, a Subchapter C Corporation, to hold a 95% interest in Landlord as the developer/owner of the Project. The remaining 5% interest in Landlord is owned by Master Tenant of which Taxpayer owns a .01% managing member interest.

Taxpayer is a “tax-exempt controlled entity” within the meaning of §168(h)(6)(F)(iii). Under the Managing Member Certificate agreement, Taxpayer was required to make an election under § 168(h)(6)(F)(ii) to be treated as a taxable entity. The election was necessary to ensure a more favorable depreciable life for the nonresidential rental property.

Based upon the information submitted, Taxpayer intended to make an election under § 168(h)(6)(F)(ii) on a timely filed federal income tax return for its first tax year ended on December 31, 2009. However, due to an oversight, Taxpayer failed to make a timely election. Soon after Taxpayer discovered its failure to make a timely election, 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, the Election is a regulatory election 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, including the affidavit submitted and representations made, 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, until 30 days from the date of issuance of this letter, for Taxpayer to file the Election.

Taxpayer must file an amended federal income tax return for its tax year ending on December 31, 2009, and attach thereto the Election and information set forth in § 301.9100-7T(a)(3). Taxpayer should 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
Branch Chief, Branch 4
(Income Tax & Accounting)

cc: