

## Internal Revenue Service

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
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Date:  
June 02, 2015

Taxpayer =  
State =  
Date =  
Limited Partnership =  
Limited Partner =  
Parent 1 =  
Parent 2 =  
Apartment Complex =

Year =

Dear :

This letter is in response to a request for a private letter ruling submitted on your behalf by your authorized representative. Specifically, you have requested an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations for Taxpayer, a tax exempt controlled entity under § 168(h)(6)(F)(iii) of the Internal Revenue Code, to make an election under § 168(h)(6)(F)(ii) to not be treated as a tax-exempt controlled entity.

### FACTS

Taxpayer is a C corporation incorporated under the laws of State on Date. Taxpayer was organized as a real estate holding company to hold an investment in Limited Partnership. Taxpayer owns 0.01% of Limited Partnership. Limited Partner owns the remaining 99.99% of Limited Partnership. Parent 1 and Parent 2 are non-stock corporations exempt from taxation under § 501(c)(3). Parent 1 owns 50% of Taxpayer,

and Parent 2 owns the remaining 50% of Taxpayer. Accordingly, Taxpayer is a tax-exempt controlled entity within the meaning of § 168(h)(6)(F)(iii).

Taxpayer is the general partner and the tax matters partner of Limited Partnership. Limited Partnership was formed to acquire, develop, finance, construct and/or rehabilitate, own, maintain, operate and sell or otherwise dispose of Apartment Complex.

Taxpayer and Limited Partner executed a partnership agreement allocating income and gain between them. In the partnership agreement, Taxpayer and Limited Partner expressly contracted to make the election under § 168(h)(6)(F)(ii) to be treated as a taxable entity on its federal income tax return for Year in which Apartment Complex was placed in service.

Taxpayer timely filed its federal income tax return for Year. Although Taxpayer relied on its tax preparer to make the election as was specified in the partnership agreement, the tax preparer failed to make the election. Taxpayer at all times intended for the election to be made on its return for Year and was not aware of the fact that the tax preparer failed to make the election. Taxpayer became aware of the omission only when it engaged a new tax preparer.

#### 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)(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 "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. 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)(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) provides the manner in which the § 168(h)(6)(F)(ii) election is made.

Section 301.9100-1(c) provides that the Commissioner of Internal Revenue has discretion to grant a reasonable extension of time to make a regulatory election. 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 the § 168(h)(6)(F)(ii) election is prescribed in § 301.9100-7T, the § 168(h)(6)(F)(ii) election is a regulatory election.

Sections 301.9100-1 through 301.9100-3 provide the standards the Service will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic extensions of time covered in § 301.9100-2) will be granted 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.

Under § 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 the interests of the Government will not be prejudiced by the granting of 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 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 information submitted indicate that Taxpayer at all times intended from the outset to make the § 168(h)(6)(F)(ii) election, and that Taxpayer's failure to make the § 168(h)(6)(F)(ii) election was inadvertent. Taxpayer represents that it has requested relief before the failure to make the § 168(h)(6)(F)(ii) election was discovered by the Service pursuant to an examination. There is no evidence that Taxpayer is using hindsight in requesting relief. Furthermore, based on the facts presented and the representations made, Taxpayer will not have a lower tax liability for all tax years affected by the § 168(h)(6)(F)(ii) than it would have had if the § 168(h)(6)(F)(ii) election had been timely made. We conclude that Taxpayer has acted reasonably and in good faith. Therefore, the interests of the Government will not be prejudiced by the granting of relief.

#### CONCLUSION

Based solely on the facts as represented and the applicable law, we conclude that the requirements of § 301.9100-3 have been met, and the request for relief under § 301.9100-3 is granted. Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this letter to file an amended return for Year. Taxpayer must attach the aforementioned § 168(h)(6)(F)(ii) election and the information set forth in § 301.9100-7T(a)(3) to the amended return. If Taxpayer files electronically, it may satisfy this requirement by attaching a statement to the return that provides the date and control number of this letter ruling.

Pursuant to § 301.9100-7T(a)(3)(ii), a copy of this letter and the § 168(h)(6)(F)(ii) election statement also should 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. Further, we express no opinion concerning the assessment of any interest, additions to tax, additional amounts or penalties for failure to file a timely income tax return with respect to any taxable year.

The ruling in this letter is based upon the information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. Although this office has not verified any of the material submitted in support of the request for the ruling, it is subject to verification on examination.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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