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September 03, 2015

LEGEND

Taxpayer =

State =

Tenant =

Property =

Taxable Year =

a =

Dear :

This letter responds to the letter dated March 26, 2015, and related correspondence, submitted on behalf of Taxpayer, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations for Taxpayer to make an election under § 1.48-4 of the Income Tax Regulations.

According to the information submitted and representations made, Taxpayer is a limited liability company organized under the laws of State. Taxpayer is treated as a partnership for federal tax purposes. Tenant, a member and partner of Taxpayer, is also a limited liability company organized under the laws of State and treated as a partnership for federal tax purposes. Taxpayer, the owner of Property, placed Property in service in Taxable Year. Property is eligible for the energy credit under § 48 of the Internal Revenue Code for Taxable Year in the amount of \$a. Tenant leases Property from Taxpayer.

Taxpayer and Tenant entered into an agreement to pass through the energy credit relating to Property to Tenant. The agreement required Taxpayer to make an election under § 1.48-4(f). However, Taxpayer failed to timely file the election. Further, Taxpayer erroneously reported the credit, in the amount of \$a, on its return for Taxable Year, but allocated the entire amount to Tenant. Tenant took into account the credit on its return, in the amount of \$a, consistent with the allocation.

LAW AND ANALYSIS

Section 38(a) allows a credit against the tax for the taxable year in an amount equal to the sum of: (1) the business credit carryforwards carried to the taxable year, (2) the amount of the current year business credit, plus (3) the business credit carrybacks carried to the taxable year.

Under § 38(b)(1), the amount of the current year business credit includes the investment credit under § 46. Under § 46(2), the energy credit is a component of the investment credit.

Section 48(a)(1) provides that, for purposes of § 46, except as provided in paragraphs (1)(B), (2)(B), (3)(B), and § 48(c)(4)(B), the energy credit for any taxable year is the energy percentage of the basis of each energy property placed in service during such taxable year.

Section 48(a)(2)(A) provides that the energy percentage is: (i) 30 percent in the case of (I) qualified fuel cell property, (II) energy property described in § 48(a)(3)(A)(i) but only with respect to periods ending before January 1, 2017, (III) energy property described in § 48(a)(3)(A)(ii), and (IV) qualified small wind energy property, and (ii) 10 percent in the case of any energy property to which § 48(a)(2)(A)(i) does not apply.

Section § 50(d)(5), makes applicable rules similar to the rules of former § 48(d) (relating to certain leased properties). Under former § 48(d)(1), a person (other than a person referred to in former § 46(e)(1) who is a lessor of property may (at such time, in such manner, and subject to such conditions as are provided by regulations prescribed by the Secretary) elect with respect to any new section 38 property (other than property described in former § 48(d)(4)) to treat the lessee as having acquired such property.

Section 1.48-4(a)(1) provides that a lessor of property may elect to treat the lessee of such property as having purchased such property for purposes of the credit allowed by § 38, if the conditions contained in § 1.48-4(a)(1)(i) – (v) are satisfied.

Section 1.48-4(a)(1)(iv) requires a statement of election to treat the lessee as a purchaser to be filed in the manner and within the time provided in § 1.48-4(f) or (g).

Section 1.48-4(f)(1) provides that the election of a lessor with respect to a particular property (or properties) must be made by filing a statement with the lessee, signed by the lessor and including the written consent of the lessee, containing the information as described in § 1.48-4(f)(1)(i) –(vii).

Section 1.48-4(f)(2) provides that the § 1.48-4(f)(1) election statement must be filed with the lessee on or before the due date (including any extensions of time) of the lessee's return for the lessee's taxable year during which possession of the property is transferred to the lessee.

Section 1.48-4(j) provides, in part, that the lessor and the lessee shall keep as a part of their records the statement referred to in § 1.48-4(f)(1), and that the lessor shall attach to his income tax return a summary statement of all property leased during his taxable year with respect to which an election is made.

Section 301.9100-1(a) provides that the regulations under this section and §§ 301.9100-2 and 301.9100-3 establish the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. An extension of time is available for elections that a taxpayer is otherwise eligible to make. However, the granting of an extension of time is not a determination that the taxpayer is otherwise eligible to make the election.

Section 301.9100-1(b) provides that the term "regulatory election" includes an election whose due date is prescribed by a regulation published in the Federal Register.

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 taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I.

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

Section 301.9100-3 provides that requests for relief subject to this section 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 information submitted and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Taxpayer is granted an extension of time of 120 days from the date of this letter to make an election in accordance with § 1.48-4(f). Further, Taxpayer must file an amended return for Taxable Year with the appropriate service center, consistent with this ruling, attaching a summary statement as required under § 1.48-4(j) and a copy of this letter. A copy is enclosed for that purpose.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the facts described above. In particular, we express no opinion on whether all of the conditions in § 1.48-4(a)(1) are satisfied, whether Taxpayer's expenditures with respect to Property qualify for the energy credit under § 48, whether Taxpayer and Tenant are partnerships for federal tax purposes, whether any member of Taxpayer or Tenant are partners for federal tax purposes, or whether the lease at issue is a lease for federal tax purposes.

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 a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by 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,

Associate Chief Counsel
(Passthroughs and Special Industries)

By: _____
Jian H. Grant
Assistant to the Branch Chief, Branch 6
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter
Copy for section 6110 purposes

cc: