

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

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PLR-117721-15

Date:

November 16, 2015

### Legend:

Taxpayer =  
Corporation =  
Partnership =  
Tax Year =

Dear :

This is in response to your letter of April 28, 2015, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Regulations on Procedure and Administration for Taxpayer to file an election under § 168(h)(6)(F)(ii) of the Internal Revenue Code.

### FACTS

Taxpayer, a corporation, is wholly-owned by Corporation, a tax-exempt entity. Taxpayer is a general partner of Partnership, a limited partnership. Partnership placed in service a low-income housing project in Tax Year.

Since Taxpayer is wholly-owned by Corporation, Taxpayer is a “tax-exempt controlled entity” within the meaning of § 168(h)(6)(F)(iii), and a portion of Partnership’s depreciable property is “tax-exempt use property.” A designation of tax-exempt use property affects the depreciation that Partnership can take for its depreciable property. Taxpayer may elect, under § 168(h)(6)(F)(ii), not to be treated as a tax-exempt entity for purposes of § 168(h)(6). This election must comply with the requirements of § 301.9100-7T of the temporary Regulations of Procedure and Administration.

Taxpayer engaged a qualified tax preparer to prepare its tax returns each year since its inception. Taxpayer intended to make the § 168(h)(6)(F)(ii) election for Tax Year. However, Taxpayer’s tax preparer was unaware that an affirmative election was

required to be attached to the Federal tax return for Tax Year and neither prepared nor attached the necessary form to the return.

At a later date, the limited partner of the Partnership requested supporting documentation related to Taxpayer's election. In reviewing the filed tax returns, tax preparer discovered and informed Taxpayer that the § 168(h)(6)(F)(ii) election had not been made in Tax Year, and that all of the subsequent Taxpayer's returns were filed as if a valid election had been made in Tax Year. Taxpayer filed the request for an extension of time to file an election under §§ 301.9100-1 and 301.9100-3 of the Regulations on Procedure and Administration § 9100 shortly thereafter.

### LAW

Section 168(h)(6)(A) provides that, for purposes of § 168(h), if (1) any property which 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 (2) any allocation to the tax-exempt entity of partnership items is not a qualified allocation, then an amount equal to such tax-exempt entity's proportionate share of such property shall be 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" shall be 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 (including extensions) for the first taxable year for which the election is to be effective.

Under § 301.9100-1(c) and § 301.9100-3(a) and (b), 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. Under § 301.9100-3(b)(1)(v), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on all of the facts and information submitted and the representations made, Taxpayer relied on a qualified tax professional to make the election under

§ 168(h)(6)(F)(ii). That tax professional failed to make a timely election. We therefore conclude that Taxpayer has acted reasonably and in good faith as described in § 301.9100-3(b)(1), and granting the requested relief will not prejudice the interests of the government.

Taxpayer is granted an extension of time of 60 days from the date of this letter ruling to file an amended return for Tax Year making the election under § 168(h)(6)(F)(ii). Taxpayer must attach the aforementioned election and the information set forth in § 301.9100-7T(a)(3) to the amended return. Taxpayer also must attach a copy of this letter to the amended return. Pursuant to § 301.9100-7T(a)(3)(ii), a copy of the election statement also should be attached to the federal income tax returns of each of the tax-exempt shareholders of Taxpayer.

### CAVEATS

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. In particular, we express no opinion as to whether Taxpayer qualifies to make the election set forth in § 168(h)(6)(F)(ii).

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

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by appropriate parties. 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,

Amy Pfalzgraf  
Senior Counsel, Branch 5  
Office of Chief Counsel  
(Income Tax & Accounting)

Enclosure (1)

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