

Internal Revenue Service

Number: **201722001**

Release Date: 6/2/2017

Index Number: 9100.04-00, 168.29-02

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-101621-17

Date: March 6, 2017

Taxpayer =

EIN: =

Exempt Organization =

EIN: =

State =

City =

Limited Partnership =

The Project =

Taxable Year =

Dear :

This letter responds to your private letter ruling request, dated January 4, 2017, regarding an extension of time to make an election under § 168(h) of the Internal Revenue Code. Specifically, you requested an extension of time to make an election under § 168(h)(6)(F)(ii) for Taxpayer, a tax-exempt controlled entity seeking to not be treated as a tax-exempt entity.

Facts

Taxpayer is organized under the laws of State and is a limited liability company for federal income tax purposes. Taxpayer uses the accrual method of accounting and the calendar year as its taxable year. Taxpayer is wholly owned by Exempt Organization, which has received a determination that it is a tax-exempt organization described in § 501(c)(3). Because Exempt Organization owns more than 50 percent in value of the stock of Taxpayer, Taxpayer is a “tax-exempt controlled entity” within the meaning of § 168(h)(6)(F)(iii).

Taxpayer is the general partner of Limited Partnership. Limited Partnership owns the Project, which does research, development, job creation, and training focused on the energy industry. Limited Partnership acquired, developed and rehabilitated/constructed the Project and took advantage of the rehabilitation credit under § 47. Taxpayer’s intent was to make an election under § 168(h)(6)(F)(ii) to be treated as a taxable entity so that the rehabilitation credit would not be limited as a result of a portion of the property being treated as tax-exempt use property.

Taxpayer relied on its tax preparer to make the election on Taxpayer’s Taxable Year Federal income tax return. However, the tax preparer inadvertently failed to attach the election to the return. The tax preparer was unaware of the oversight until a copy of Taxpayer’s Taxable Year Federal income tax return was requested by an equity investor’s legal counsel in connection with the financial closing of the Project. Soon after the tax preparer learned of the mistake, he filed this request on behalf of Taxpayer for permission to make a late election.

Applicable Law

Under § 47(a)(2), a rehabilitation credit is provided for 20 percent of the qualified rehabilitation expenditures with respect to any certified historic structure.

Section § 168(h)(6)(A) provides that (1) if any property which 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 47(c)(2)(B) provides that expenditures allocable to the portion of a certified historic structure that is tax-exempt use property are not qualified rehabilitation expenditures.

A tax-exempt controlled entity is treated as a tax-exempt entity under § 168(h)(6)(F)(i). Section 168(h)(6)(F)(iii)(I) defines a tax-exempt controlled entity as any corporation if 50 percent or more of the corporation’s stock is held by one or more tax-exempt entities.

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. This 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) of the Procedure and Administration Regulations 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. 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 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.

Analysis

Based on the facts and information submitted, we conclude that Taxpayer has satisfied the requirements of the regulations for granting an extension of time to file its § 168(h)(6)(F)(ii) election. Accordingly, Taxpayer is treated as if it had made the § 168(h)(6)(F)(ii) election with the tax return it filed for Taxable Year, provided that Taxpayer attaches a copy of this letter to the next tax return it files. In addition, pursuant to § 301.9100-7T(a)(3)(ii), a copy of the election statement should be attached to the federal income tax returns of each of the tax-exempt shareholders or beneficiaries of Taxpayer. 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.

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. § 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.

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.

If you have any questions concerning this matter, please contact the individual whose name and telephone number appear at the beginning of the letter.

Sincerely,

Stephen J. Toomey
Senior Counsel
Office of Associate Chief Counsel
(Income Tax & Accounting)