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Department of the Treasury
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Person To Contact:
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Telephone Number:

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In Re:

Date:
March 27, 2017

LEGEND

Taxpayer =

Tenant =

Year X =
State =
Property =

Dear :

This letter responds to a letter, dated December 30, 2016, and subsequent 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 for Year X.

FACTS

According to the information submitted and representations made, Taxpayer, a limited liability company organized under the laws of State, owns the Property. Taxpayer rehabilitated the Property in a manner that qualified for the rehabilitation credit under § 47 of the Internal Revenue Code. Tenant, a limited liability company organized under the laws of State, leases the Property from Taxpayer.

Taxpayer and Tenant entered into an agreement to pass through Taxpayer's qualified rehabilitation expenditures (QREs) relating to the Property to Tenant. The agreement required Taxpayer to file an election under § 1.48-4 on or before the due

date (including extensions) of Tenant's return for the year in which the QREs are placed in service. Taxpayer placed in service a phase of the rehabilitated Property in Year X. However, Taxpayer failed to timely make the election for Year X, due to inadvertence.

Neither Taxpayer nor Tenant claimed the rehabilitation credit based on the QREs placed in service in Year X. Further, Taxpayer has not made an election under § 47(d)(5).

LAW AND ANAYLYSIS

Section 38(a) allows a credit 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(1), the investment credit includes the rehabilitation credit under § 47.

Section 47(a) provides that the rehabilitation credit for any taxable year is the sum of: (1) 10 percent of the qualified rehabilitation expenditures with respect to any qualified rehabilitated building other than a certified historic structure, and (2) 20 percent of the qualified rehabilitation expenditures with respect to any certified historic structure.

Under § 47(b)(1), qualified rehabilitation expenditures with respect to any qualified rehabilitated building shall be taken into account for the taxable year in which the qualified rehabilitated building is placed in service.

Section 47(c)(1)(C)(i) provides that a building shall be treated as having been substantially rehabilitated only if the qualified rehabilitation expenditures during the 24-month measuring period selected by the taxpayer ending with or within the taxable year exceed the greater of (I) the adjusted basis of the building as of the beginning of the 24-month period; or (II) $5,000.

Section 47(c)(1)(C)(ii) provides that, in the case of any rehabilitation that may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the physical work on the rehabilitation begins, a 60-month measuring period shall be substituted for a 24-month measuring period.

Section 1.48-12(b)(2)(v) provides, in part, that a rehabilitation may reasonably be expected to be completed in phases if it consists of two or more distinct stages of development. The determination of whether a rehabilitation consists of distinct stages and therefore may reasonably be expected to be completed in phases shall be made on

the basis of all the relevant facts and circumstances in existence before physical work on the rehabilitation begins.

Section § 50(d)(5), makes applicable rules similar to the rules of former § 48(d) (relating to certain leased property). 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 the property.

Section 1.48-4(a)(1) provides that a lessor of property may elect to treat the lessee of the property as having purchased the property for purposes of the credit allowed by § 38, if the conditions specified in § 1.48-4(a)(1)(i) through (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 the 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 specified in § 1.48-4(f)(1)(i) through (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 that the lessor and the lessee must keep as a part of their records the election statement referred to in § 1.48-4(f)(1) and that the lessor must attach to its income tax return a summary statement of all property leased during its taxable year with respect to which an election is made. The summary statement must contain the following information: (1) the name, address, and taxpayer account number of the lessor; and (2) in numerical account number order, each lessee's account number, name, and address, the estimated useful life category of the property (or, if applicable, the estimated useful life expressed in years), and the basis or fair market value of the property, whichever is applicable.

Section 301.9100-1(a) provides that 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 “election” includes an application for relief in respect of tax and 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 extensions of time for making 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 the evidence (including the affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the government.

CONCLUSION

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 under § 1.48-4(a) for Year X. For this purpose, Taxpayer must file a statement of election in accordance with § 1.48-4(f). Further, Taxpayer must file an amended return for Year X, attaching the summary statement required by § 1.48-4(j) and a copy of this letter. A copy of this letter 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 under any provisions of the Code. In particular, we express no opinion on whether all of the conditions specified in § 1.48-4(a)(1) are satisfied, whether Taxpayer’s rehabilitation expenditures with respect to the Property are qualified rehabilitation expenditures under § 47, whether Taxpayer’s rehabilitation meets the definition of a phased rehabilitation under § 1.48-12(b)(2)(v), or whether Taxpayer’s rehabilitation of the Property otherwise meets the requirements under § 47. Further, we express no opinion on whether any of the limited liability companies involved are partnerships for federal tax purposes, whether any of the members of the limited liability companies are partners for federal tax purposes, or whether the lease at issue is 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 each of your authorized representatives.

The ruling contained in this letter is based on the information submitted and representations made 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 ruling, it is subject to verification on examination.

Sincerely,

John P. Moriarty
Acting Associate Chief Counsel
(Passthroughs and Special Industries)

By: _____
Jian H. Grant
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures:
Copy of this letter
Copy for section 6110 purposes