

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.

Telephone Number:

Refer Reply To:

CC:ITA:B04

PLR-113439-17

Date:

June 19, 2017

Taxpayer =

EIN: =

Exempt Organization =

EIN: =

State =

Landlord =

Tenant =

Taxable Year 1 =

Date 1 =

Date 2 =

Taxable Year 2 =

Dear :

This letter responds to your private letter ruling request, dated March 19, 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, a tax-exempt entity. 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 a managing member of Landlord and Tenant. Landlord was organized to develop, finance, rehabilitate, construct, own, operate, maintain, lease and sell or otherwise dispose of the property. Landlord qualified for the rehabilitation credit under § 47 and elected to pass the credit through to Tenant. Tenant was organized to lease, hold, and maintain the project as a commercial office building and related facilities. Taxpayer is Tenant’s managing member with a 1% ownership interest.

Landlord and Tenant executed an agreement on Date 1, which stated that neither Landlord nor any of its members constitute a “tax-exempt controlled entity” within the meaning of § 168(h)(6)(F)(iii). Further, under Tenant’s operating agreement, Taxpayer was required to make an election under § 168(h)(6) 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.

Exempt Organization hired a tax preparer to prepare returns for Landlord and Tenant. The tax preparer mistakenly failed to prepare Form 1120, U.S. Corporation Income Tax Return, for Taxpayer due to the tax preparer’s assumption that Taxpayer was a single member LLC disregarded for Federal income tax purposes. Tax preparer was unaware that Taxpayer had filed Form 8832, Entity Classification Election, to elect to be treated as a C-Corporation. As a result, the Taxable Year 1 Federal income tax return for Taxpayer was not timely filed and a § 168(h)(6) election could not be made since the return was filed late. After discovering the mistake, the tax preparer prepared and filed the return on Date 2, along with Taxpayer’s timely Taxable Year 2 return.

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 1, 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. Section 6110(k)(3) provides that it may not be used or cited as precedent.

If the taxpayer wants its authorized representative to receive copies of notices and communications in this matter with the Service, the taxpayer must submit a new completed Form 2848, *Power of Attorney and Declaration of Representative*, which is

available at irs.gov. The box under the Representative's name and address must be checked.

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)