

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
 , ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B04
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Date:
October 31, 2017

LEGEND

<u>Taxpayer</u>	=
<u>Exempt Organization</u>	=
<u>Year 1</u>	=
<u>State</u>	=
<u>Date 1</u>	=
<u>Month 1</u>	=
<u>Limited Partnership 1 (LP1)</u>	=
<u>Limited Partnership 2 (LP2)</u>	=
<u>Project 1</u>	=
<u>Project 2</u>	=
<u>a</u>	=
<u>b</u>	=
<u>c</u>	=
<u>d</u>	=

Dear :

This letter responds to your letter, dated June 28, 2017, in which Taxpayer requested an extension of time under § 301.9100-3 of the Procedure and Administration Regulations (“Regulations”) to make two elections, each effective as of Taxpayer’s inception in Year 1. The elections are: (1) to file an election under § 301.7701-3(c) to treat Taxpayer as an association taxable as a corporation for federal tax purposes (“the Corporation Election”); and (2) to make an election under § 168(h)(6)(F)(ii) of the Internal Revenue Code (“Code”) for Taxpayer, a tax-exempt controlled entity under

§ 168(h)(6)(F)(ii), to not be treated as a tax-exempt controlled entity from its inception (“the Section 168 Election”).

FACTS

Taxpayer was organized under the laws of State as a limited liability company on Date 1. Taxpayer uses the accrual method of accounting and has 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) of the Code.

Taxpayer’s sole business operation is to act as the managing general partner in Partnerships. “Partnerships” is a collective term used in describing Limited Partner 1 (LP1) and Limited Partner 2 (LP2). LP1 and LP2 were each formed to acquire, own and rehabilitate low income housing in State. LP1 purchased Project 1 during Month 1, Year 1. Project 1 is a low income residential apartment complex consisting of a buildings and b units. LP2 purchased Project 2 during Month 1, Year 1. Project 2 is a low income residential complex consisting of c buildings and d units. Projects 1 and 2 both have been recently completed.

Taxpayer intended to elect to be treated as an association taxable as a corporation effective Date 1. However, due to inadvertence, Taxpayer failed to timely file Form 8832, Entity Classification Election. Additionally, Taxpayer intended to make a timely Section 168 election, but inadvertently failed to do so. Upon discovering its failure to make the elections, Taxpayer promptly sought an extension of time in which to file the elections.

LAW AND ANALYSIS

The Corporation Election

Section 301.7701-3(a) of the Regulations provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7) or (8) (an eligible entity) can elect its classification for federal tax purposes as provided in § 301.7701-3. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(1)(ii) provides that unless a domestic eligible entity elects otherwise, the entity is disregarded as an entity separate from its owner if it has a single owner.

Section 301.7701-3(c)(1)(i) provides, in part, that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b), or to change its classification, by filing Form 8832 with the service center designated on Form 8832.

Section 301.7701-3(c)(1)(iii) provides that an election made under § 301.7701-3(c)(1)(i) will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified on the election form. The effective date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed.

The Section 168 Election

Section 167(a) of the Code provides generally for a depreciation deduction for property used in a trade or business. Under § 168(g) of the Code, the alternative depreciation system must be used for any tax-exempt use property as defined in § 168(h).

Section 168(h)(6)(A) provides that, for purposes of § 168(h), if any property that is not tax-exempt use property is owned by a partnership having both a tax-exempt entity and a nontax-exempt entity as partners and any allocation to the tax-exempt entity 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 generally that any tax-exempt controlled entity shall be treated as a tax-exempt entity for purposes of § 168(h)(5) and (6).

Under § 168(h)(6)(F)(ii), a tax-exempt controlled entity can 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. Under § 301.9100-7T(a)(2)(i) of the Regulations, an election under § 168(h)(6)(F)(ii) must be made by the due date of the tax return for the first taxable year for which the election is to be effective.

Section 301.9100-1(a) of the Regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election under all subtitles of the Internal Revenue Code (Code), except subtitles E, G, H, and I. Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice or announcement published in the Internal Revenue Bulletin. The Corporation Election and the Section 168 Election are both regulatory elections.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections.

Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(a) provides that

requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith. Under § 301.9100-3(b)(3), a taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer seeks to alter a return position for which an accuracy-related penalty could be imposed under § 6662 of the Code at the time the taxpayer seeks relief, or knew of the election and related tax consequences, but chose not to file the election, or uses hindsight in requesting relief.

Additionally, § 301.9100-3(c) provides that the Service will grant a reasonable extension of time only when the interests of the Government will not be prejudiced by the granting of relief. The interests of the government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made.

CONCLUSION

Based solely on the information submitted and representations made, we conclude that Taxpayer has satisfied the requirements of §§ 301.9100-1 and 301.9100-3. Taxpayer intended from the outset to make both the Corporation Election and the Section 168 Election, its failure to make the elections was inadvertent, and Taxpayer is not using hindsight in requesting relief. Moreover, Taxpayer requested relief before the failure to make the election was discovered by the Service. Finally, Taxpayer acted reasonably and in good faith and the interests of the Government will not be prejudiced by the granting of relief under § 301.9100-3.

Accordingly, pursuant to § 301.9100-3, Taxpayer is granted an extension of time of 120 days from the date of this letter ruling to make both the Corporation Election and the Section 168 Election. This ruling is contingent on Taxpayer filing, within 120 days from the date of this letter ruling, all required returns for all prior years consistent with the requested relief. As to the Corporation Election, Taxpayer should file a properly executed Form 8832 with the appropriate service center electing to be treated as an association taxable as a corporation effective Date 1. A copy of this letter ruling should be attached to the Form 8832. As to the Section 168 Election, Taxpayer should make the election in the manner provided in § 301.9100-7T(a)(3)(ii). Taxpayer should attach Form 8832, the information provided in § 301.9100-7T(a)(3)(ii), and a copy of this letter ruling to the first of its required income tax returns.

Although this office has not verified any of the material submitted or facts assumed in support of the request for ruling, they are subject to verification on examination.

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In addition, § 301.9100-1(a) provides that the granting of an

extension of time for making an election is not a determination that the taxpayer is otherwise eligible to make the election.

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

Enclosed is a copy of the letter ruling showing the deletions proposed to be made when it is disclosed under § 6110.

We are also sending a copy of the letter ruling and of the proposed deletions to your designated representative, pursuant to a Form 2848, Power of Attorney and Declaration of Representative, on file in this office.

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
Income Tax & Accounting
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure: Copy for § 6110 purposes