

Internal Revenue Service

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Department of the Treasury
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Person To Contact: _____, ID No.

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Date:
September 21, 2021

FAX No:

Legend

- Taxpayer =
- Tax Year =
- State A =
- Date 1 =
- Date 2 =
- Association =
- Master Tenant =
- Realty =
- County =
- Date 3 =
- Date 4 =
- a percent =
- Fund =
- b percent =
- Date 5 =
- Date 6 =
- c percent =
- d percent =
- Individual =
- e percent =
- Building =
- Closing Date =

Date 7	=
Date 8	=
Date 9	=
Date 10	=
College	=
Date 11	=
Short Year	=
Date 12	=
Accounting Firm	=
Date 13	=
Partner	=

Dear _____ :

This letter responds Taxpayer's request for a private letter ruling dated March 15, 2021. Specifically, Taxpayer has requested a ruling pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations (Regulations) extending the time to make an election, under § 168(h)(6)(F)(ii) of the Internal Revenue Code (Code), not to be treated as a tax-exempt controlled entity for Tax Year and each year thereafter.

FACTS

Taxpayer was formed as a limited liability company under the laws of State A on Date 1, and it commenced business operations as of Date 2. The annual accounting period of Taxpayer, Association, Master Tenant and Realty is the calendar year. The method of accounting for the Taxpayer, Association, Master Tenant and Realty is the accrual method of accounting.

Taxpayer is wholly owned by, and its sole member is, Association, which is a State A non-profit corporation exempt from taxation under § 501 of the Code. Taxpayer is a disregarded entity for tax purposes and is treated as a tax-exempt controlled entity for purposes of § 168(h)(6)(F)(iii). The non-member manager of Taxpayer is County.

On Date 3, Master Tenant was formed as a limited liability company under the laws of State A, and it commenced business operations as of Date 4. Master Tenant has two members: Taxpayer to the extent of a a percent membership interest and Fund to the extent of a b percent membership interest.

On Date 5, Realty was formed as a limited liability company under the laws of State A, and it commenced business operations as of Date 6. Realty has three members: Taxpayer to the extent of a c percent membership interest; Master Tenant to the extent of a d percent membership interest; and, Individual, an individual resident of the State A, to the extent of a e percent membership interest. Accordingly, Realty is a tax-exempt controlled entity for purposes of § 168(h)(6)(F)(iii) of the Code to the extent of Taxpayer's percent c percent membership interest.

Realty was formed for the purpose of owning and holding Building, which is shuttered, and the land upon which Building is located (together, Building and the land constitute Property). Realty undertook the renovation and rehabilitation of Building and the construction of certain improvements to Building with the intent of converting Building into a culinary and event center, and to help ensure the preservation and protection of the historic character of Building (Project).

Master Tenant was formed for the purpose of receiving contributions from its members in order to make a capital contribution to Realty in consideration of Master Tenant's d percent membership interest in Realty, as well as to enter into a master lease of Property, as master tenant, with Realty, as master landlord.

Taxpayer was formed for the purpose of receiving contributions from its members in order to make a capital contribution to Realty in consideration of Taxpayer's c percent membership interest in Realty and a percent membership interest in Master Tenant. In addition, by the Amended and Restated Operating Agreement of Master Tenant, Taxpayer was designated and appointed as the member-manager of Master Tenant.

Project was designed so that certain "qualified rehabilitation expenditures" incurred in connection with the rehabilitation and renovation of Building will generate Federal rehabilitation credits (Federal HTCs) available under § 47 of the Code, and State A credits (State A HTCS) for the rehabilitation of historic properties available under State A tax law.

In connection with and as part of the overall Project transaction, which closed as of Closing Date, Realty received from the National Park Service: (i) Part I-Evaluation of Significance confirming that the Property is a "certified historic structure" for rehabilitation purposes; (ii) Part 2, as amended, confirming that the rehabilitation plans and specifications meet the Secretary of the Interior's Standards of Rehabilitation; and (iii) Part 3-Request for Certification of Completed Work confirming that its completed rehabilitation of the Property meets the Secretary of the Interior's Standards for Rehabilitation and is consistent with the historic character of the Property, which designated the rehabilitation of the Property as a "certified rehabilitation," thereby being confirmed as eligible for Federal HTCs under § 47 of the Code, and as such, eligible for the State A HTCS.

Taxpayer executed on Date 7 a Form 8832, *Entity Classification Election* (8832 Election), electing to be classified as an association taxable as a corporation. The Form 8832 was delivered to the Internal Revenue Service (Service) under certified letter dated Date 8. This Form 8832 was filed by the Taxpayer to evidence its intention to be classified as an association taxable as a corporation for purposes of applying the rules contained in § 168(h)(6) of the Code.

By its letter dated Date 9, the Service acknowledged that its records showed that Taxpayer's 8832 Election was accepted and, as such, Taxpayer is to be taxed as a

corporation and will be required to file Form 1120, U.S. *Corporation Income Tax Return*, each year with the Service.

At Closing, Realty made an election, in accordance with the rules set forth in § 50 (and former § 48(d)) of the Code and § 1.48-4(f) of the Income Tax Regulations, to pass the Federal tax credits through to Master Tenant (the "Pass-Thru Election") in consideration of its capital contribution to Realty. Realty and Master Tenant also entered into a Master Lease (Master Lease) dated Date 10 pursuant to which Realty leased the Property to Master Tenant for the entirety of the Property with a nineteen (19) year term. Under Master Lease, no part of Property shall be used as residential rental property. Master Tenant sub-leased the Property to College for its use and operation as a culinary and event center in educating students in its culinary and hospitality programs.

You represent that Taxpayer, as a tax-exempt controlled entity, was required to provide, and did provide, as part of the Project transaction's closing, an election in accordance with § 168(h)(6)(F)(ii) of the Code (Election). In addition, Project was placed in service on Date 11.

Taxpayer's first taxable year was Short Year. Taxpayer represents that consistent with its 8832 Election to be taxed as a taxable corporation, Taxpayer filed with the Service its Form 1120, *U.S. Corporation Income Tax Return*, for its first tax year on Date 12. Taxpayer intended to timely make the Election, and it relied on its Accounting Firm to timely file the Election with its Form 1120, *U.S. Corporation Income Tax Return*, for Taxpayer's Short Year.

Accounting Firm maintains that it relied upon the Date 9 correspondence from the Service indicating that the Taxpayer's 8832 Election had been accepted and which confirmed that Taxpayer shall be taxed as a corporation and should file Form 1120. Based on that reliance, Accounting Firm believed that the Election had previously been filed with the Service. Given that belief, Accounting Firm did not attach the Election to Taxpayer's Short Year Form 1120 as otherwise required by § 301.9100-7T(a)(3) of the Regulations. Taxpayer was unaware of this decision by Accounting Firm.

On or about Date 13, Fund, the b percent member of Master Tenant (Investor Member) questioned whether Accounting Firm had made the Election in accordance with the requirements of § 301.9100-7T(a)(3) of the Regulations. After review by Accounting Firm, the Fund, counsel for Fund, Taxpayer, and counsel for Taxpayer, it was determined that the Election had not been properly made.

Accordingly, Taxpayer determined that it would promptly file a request for a private letter ruling to extend the time under §§ 301.9100-1 and 301.9100-3 of the Regulations to make the election under § 168(h)(6)(F)(ii) of the Code to not be treated as a tax-exempt controlled entity for its tax year ending December 31 of Tax Year, and for all tax years thereafter.

Taxpayer represents that (i) the Service has not discovered the failure to timely make the Election; (ii) Taxpayer has not received any notice or correspondence from the Service regarding its failure to timely make the Election; (iii) extending the period of time for Taxpayer to make the Election will not result in any lesser income tax liability for Taxpayer's Short Year or for any subsequent tax year affected by the Election than the amount of income tax liability had the Election been timely made; and (iv) none of Taxpayer's tax years affected by the Election, had it been timely filed, are closed tax years under § 6501 of the Code.

In addition, supporting Affidavits have been received from Taxpayer; Accounting Firm signed by Partner; and Taxpayer's authorized representative for purposes of this request for a private letter ruling. From the materials submitted, including affidavits submitted by Taxpayer and Accounting Firm, it is clear Taxpayer at all times intended to make the election under § 168(h)(6)(F)(ii) of the Code. Upon discovering its failure, Taxpayer promptly sought an extension of time in which to file the election.

Accordingly, Taxpayer requests an extension of time under §§ 301.9100-1 and 301.9100-3 of the Regulations to make an election under §168(h)(6)(F)(ii) of the Code to not be treated as a tax-exempt controlled entity for its tax year ending December 31, Tax Year, and for each taxable year thereafter.

APPLICABLE LAW AND ANALYSIS

Section 168(h)(6)(A) of the Code 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) of the Code provides generally that any tax-exempt controlled entity shall be treated as a tax-exempt entity for purposes of §§ 168(h)(5) and (6). Section 168(h)(6)(F)(iii)(I) provides that a tax-exempt controlled entity is any corporation if 50 percent or more (in value) of the stock is held by 1 or more tax-exempt entities. Because Association owns more than 50 percent in value of Taxpayer's stock, Taxpayer is a tax-exempt controlled entity under that section.

Under § 168(h)(6)(F)(ii) of the Code, a tax-exempt controlled entity may elect to not 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) of the Code 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 of Internal Revenue has discretion to grant a reasonable extension of time to make a regulatory election. Section 301.9100-1(b) defines the term “regulatory election” as including any election the due date for which is prescribed by a regulation. The election allowed by § 168(h)(6)(F)(ii) of the Code is a regulatory election.

Sections 301.9100-1 through 301.9100-3 of the Regulations provide the standards that the Service will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic changes covered in § 301.9100-2) will be granted when the taxpayer provides evidence (including affidavits) to establish that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) of the Regulations provides that a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer --

- (i) requests relief before the failure to make the regulatory election is discovered by the Service;
- (ii) failed to make the election because of intervening events beyond the taxpayer’s control;
- (iii) failed to make the election because, after exercising due diligence, the taxpayer was unaware of the necessity for the election;
- (iv) reasonably relied on the written advice of the Service; or
- (v) reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make the election.

Under § 301.9100-3(b)(3) of the Regulations, a taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer --

- (i) seeks to alter a return position for which an accuracy-related penalty could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires a regulatory election for which relief is requested;
- (ii) was fully informed of the required election and related tax consequences, but chose not to file the election; or
- (iii) uses hindsight in requesting relief. If specific facts have changed since the original deadline that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief.

Section 301.9100-3(c) of the Regulations 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

From the materials submitted, including affidavits submitted by Taxpayer and Accounting Firm, it is clear that Taxpayer, at all times, intended to make the election under § 168(h)(6)(F)(ii) of the Code. Upon discovering its failure, Taxpayer promptly sought an extension of time in which to file the election.

Based solely on the facts as represented and the applicable law, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 of the Regulations have been met. Taxpayer is granted an extension of 60 days from the date of this ruling to file the election statement with the appropriate service center containing the information required in § 301.9100-7T(a)(3) for the election to be effective beginning with Short Year. Taxpayer must attach a copy of this letter to the election statement. Further, the letter ruling should be attached for all subsequent returns (and amended returns) for all taxable years to which this ruling is relevant. In addition, pursuant to § 301.9100-7T(a)(3)(ii), a copy of the election statement should be attached to the Federal tax returns of the tax-exempt shareholders of Taxpayer.

This ruling is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement signed by an appropriate party. Although this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

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) of the Code 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.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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,

Christina M. Glendening
Senior Counsel, Branch 5
Office of Chief Counsel
(Income Tax & Accounting)

Enclosure (1)

cc: