

Internal Revenue Service

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Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B03

PLR-109745-22

Date:

November 09, 2022

X =

Y =

Partnership =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year =

Agreement =

a =

Dear _____ :

This ruling is in response to a letter dated May 6, 2022, and subsequent correspondence submitted on behalf of X by its authorized representative, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for X to file an election under § 301.7701-3 to be classified as an association taxable as a corporation for federal tax purposes (Entity Classification Election), and to file an election under § 168(h)(6)(F)(ii) of the Internal Revenue Code (Code) to not be treated as a tax-exempt controlled entity (Section 168(h)(6)(F)(ii) Election) (together, the Elections).

Facts

Based on the information submitted, X was formed under the laws of State on Date 1. X represented that it is an entity eligible to elect to be classified as an association taxable as a corporation for federal tax purposes. However, X failed to timely file a Form 8832, Entity Classification Election, electing to be classified as an association for federal tax purposes effective Date 2 as contemplated by the Agreement.

Y, a tax-exempt organization described in § 501(c)(3), is the sole owner of X. Because Y owns more than 50 percent in value of the stock of X, X is a tax-exempt controlled entity within the meaning of § 168(h)(6)(F)(iii).

X owns a% of Partnership. X represented that Partnership is classified as a partnership for federal tax purposes. X's sole business operation is to serve as the managing member of Partnership. Partnership was formed to acquire, construct, and operate property in a manner that qualifies for federal low-income housing tax credits under § 42 of the Code. Partnership acquired the property during Year and portions of the property were placed in service on Date 3 and Date 4.

X represented that it intended to make a § 168(h)(6)(F)(ii) Election, electing to not be treated as a tax-exempt controlled entity for Year as contemplated by the Agreement, but failed to timely file the election.

X submitted three affidavits in support of its representations and ruling requests. X represented that it did not affirmatively choose to decline making the Elections and did not use hindsight in requesting relief. X also represented that X requested relief before the Internal Revenue Service discovered the failure to make the Elections.

Further, X represented that it will not have a lower tax liability for all tax years affected by the Elections than X would have had if the Elections had been timely made, and the taxable year in which the Elections should have been made are not closed under § 6501(a).

Law and Analysis

Entity Classification Election

Section 301.7701-3(a) 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 a single owner can elect to be classified as an association taxable as a corporation or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(1) provides that except as provided in § 301.7701-3(b)(3), unless the entity elects otherwise, a domestic eligible entity is (i) a partnership if it has two or more members; or (ii) 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.

Section 168(h)(6)(F)(ii) Election

Section 167(a) of the Code provides generally for a depreciation deduction for property used in a trade or business. However, under § 168(g)(1), the alternative depreciation systems 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 (1) any property which (but for this subparagraph) is not tax-exempt use property is owned by a partnership having both a tax-exempt entity and a non-tax-exempt entity as partners, and (2) 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 is treated as a tax-exempt use property.

Section 168(h)(6)(F)(i) provides generally that any tax-exempt controlled entity is treated as a tax-exempt entity for purposes of § 168(h)(6). Under § 168(h)(6)(F)(iii)(I), a corporation (without regard to that subparagraph and § 168(h)(2)(E)) constitutes a "tax-exempt controlled entity" if 50 percent or more (in value) of the corporation's stock is held by one or more tax-exempt entities (other than a foreign person or entity).

Section 168(h)(6)(F)(ii) provides that, for purposes of § 168(h)(6) a tax-exempt controlled entity can elect not to be treated as a tax-exempt entity. Once made, the election is irrevocable and will bind all tax-exempt entities holding an interest in the tax-exempt controlled entity.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make the election. Section 301.9100-2 provides 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.

Because the due date of the § 168(h)(6)(F)(ii) election is prescribed in § 301.9100-7T, the § 168(h)(6)(F)(ii) election is a regulatory election.

Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides 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, and the grant of the relief will not prejudice the interests of the Government.

Conclusions

Based solely on the facts submitted and representation made, we conclude that X has satisfied the requirements of §§ 301.9100-1 and 301.9100-3 for granting an extension of time to file its Entity Classification Election. As a result, X is granted an extension of time of 120 days from the date of this letter to file Form 8832 with the appropriate service center to elect to be classified as an association for federal tax purposes effective Date 2. A copy of this letter ruling should be attached to the Form 8832.

We also conclude that X has satisfied the requirements of §§ 301.9100-1 and 301.9100-3 for granting an extension of time to file its § 168(h)(6)(F)(ii) Election. X intended to make a § 168(h)(6)(F)(ii) Election to be treated as a taxable entity but failed to make an election on a timely filed tax return. This failure was inadvertent and X did not use hindsight in requesting relief. Moreover, X requested relief before the Internal Revenue Service discovered the failure to make the election. Finally, X 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. As a result, X is granted an extension of time of 120 days from the date of this letter to file the § 168(h)(6)(F)(ii) Election statement with the appropriate service center containing the information required in § 301.9100-7T(a)(3) for that election to be effective for Year. X must attach a copy of this letter ruling to its § 168(h)(6)(F)(ii) Election statement.

These rulings are contingent on X filing, within 120 days of the date of this letter, all required returns for all open years consistent with the requested relief. A copy of this letter ruling should be attached to X's federal tax returns for the tax years affected. Alternatively, if X files its tax returns electronically, it may satisfy this requirement by attaching a statement to its returns that provides the date and control number of this letter ruling.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code and the regulations thereunder. 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.

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 rulings requested, it is subject to verification on examination.

These rulings are directed only to the taxpayer requesting them. Section 6110(k)(3) of the Code provides that they may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

/s/ Margaret Burow

By: _____
Margaret Burow
Senior Counsel, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure
Copy for § 6110 purposes

cc: