Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

[Third Party Communication:
Date of Communication: Month DD, YYYY]

Person To Contact:
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Refer Reply To:
CC:ITA:B05
PLR-121197-22

Date:
April 28, 2023

Legend:

Taxpayer	=
Date 1	=
Date 2	=
Date 3	=
State	=
Corporation	=
	=
Partnership	
Tax-Exempt Entity A	=
Tax-Exempt Entity B	=
Year 1	=
Firm	=
X%	=
Y%	=
Z%	=
A%	=

Dear :

This letter responds Taxpayer's request for a letter ruling dated Date 1. Taxpayer requests an extension of time to make an election under § 168(h)(6)(F)(ii) of the Internal Revenue Code (Code) to Taxpayer, a tax-exempt controlled entity under Code § 168(h)(6)(F)(iii) for Year 1.

FACTS

Taxpayer was formed as a limited liability company under the laws of State on Date 2. Taxpayer uses the accrual method as their overall method of accounting and uses the calendar year as their taxable year. Taxpayer was previously a disregarded entity wholly owned by Corporation, a domestic corporation. Corporation was X% owned by Tax-Exempt Entity A, a tax-exempt organization. Subsequently, as of Date 3, Taxpayer was Y% owned by Corporation and Z% owned by Tax-Exempt Entity B, a tax-exempt organization.

Taxpayer owned A% of Partnership. Partnership was organized to develop, finance, construct, own, and operate multi-family residential units. Under Partnership's operating agreement, Taxpayer was required to make an election under Code § 168(h)(6) so that any depreciable property would not be limited due to a portion of the property being treated as tax-exempt use property. All parties involved in the creation of Partnership agreed and acknowledged that a Code § 168(h)(6)(F)(ii) election would be made by Taxpayer, by the due date (including extensions) of the tax return for the first tax year that the election applies.

Tax-Exempt Entity A engaged Firm to prepare Taxpayer's Year 1 federal income tax return. Firm mistakenly failed to prepare Taxpayer's Year 1 federal income tax return due to the tax return preparer's assumption that Taxpayer was a single member limited liability corporation disregarded for federal income tax purposes.

As a result, Taxpayer's Year 1 federal income tax return was not timely filed and the Code § 168(h)(6)(F)(ii) election was not made. Shortly thereafter, Firm learned that Tax-Exempt Entity B had become a part owner in Taxpayer and that Taxpayer was no longer a disregarded entity of Corporation as of Date 3. At that time, it was discovered that the extension to file a federal income tax return for Taxpayer was not timely filed which resulted in the missed Code § 168(h)(6)(F)(ii) election. Partnership's tax return was filed inconsistent with Taxpayer's filed return since Partnership's federal income tax return for Year 1 was filed in accordance with a proper Code § 168(h)(6)(F)(ii) election. According to the information provided to us, Partnership's return was filed consisted with the contractual agreement and intent of the parties which reflected that a Code § 168(h)(6)(F)(ii) election would be made by Taxpayer.

Subsequently, Taxpayer hired Firm to file a Private Letter Ruling Request, requesting an extension of time within which to property make the Code § 168(h)(6)(F)(ii) election for the Taxpayer for Year 1.

APPLICABLE LAW AND ANALYSIS

Code § 168(h)(6)(A) provides that, for the purposes of Code § 168(h), if any property that is not tax-exempt property is owned by a partnership having both a tax-exempt entity and a non-tax-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.

Code § 168(h)(6)(F)(i) generally provides 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% of more (in value) of the stock is held by 1 or more tax-exempt entities. Because Tax-Exempt Entity B is the owner of Z% in value of Taxpayer's stock, and Tax-Exempt Entity A is the X% owner of Corporation, which in turn owns Y% in value of Taxpayer's stock, Taxpayer is a tax-exempt controlled entity under that section.

Under § 168(h)(6)(F)(ii), a tax-exempt controlled entity may elect to not be treated as a tax-exempt entity. Such an election is irrevocable and binds all tax-exempt entities holding an interest in the tax-exempt controlled entity.

Under § 301.9100-7T(a)(2)(i) of the Procedure and Administration Regulations (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 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) 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 describe in § 301.9100-2) will be granted when the taxpayer provides evidence (including through affidavits) to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

Sections 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 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 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 required 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

Based on the facts and information submitted and the representations made, we conclude that Taxpayer has acted reasonably and in good faith, and that the granting of relief would not prejudice the interests of the government. Accordingly, based solely on the facts and information submitted, and the representations made in the ruling request, we grant Taxpayer an extension of 60 days from the date of this letter ruling to file a federal income tax return for Year 1 to make an election under Code § 168(h)(6)(F)(ii).

This ruling is based on the information and representations submitted on behalf of Taxpayer and accompanied by penalty of perjury statement signed by the appropriate parties. 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.

Enclosed is a copy of the letter showing the deletions proposed to be made when it is disclosed under § 6110 of the Code. If you have any questions concerning this matter, please contact the individual whose name and telephone number appear at the beginning of the letter. We express no opinion regarding the tax treatment of the instant transaction under the provisions of any other sections of the Code or regulations that may be applicable, or regarding the tax treatment of any conditions existing at the time of, or effects resulting from, the instant transaction.

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.

Sincerely,

Kyle C. Griffin
Senior Counsel, Branch 5
Office of Chief Counsel
(Income Tax and Accounting)

cc: