

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202340010**
Release Date: 10/6/2023

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 9100.31-00, 9100.04-00,
9100.00-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-101428-23

Date:
July 06, 2023

Legend

X =

Y =

Z =

W =

Date =

Year 1 -

Year 2 =

a =

Dear :

This letter responds to a letter dated January 19, 2023, and subsequent correspondence submitted on behalf of X by its authorized representatives, requesting that the Service grant X an extension of time under § 301.9100-3 of the Procedure and Administration Regulations (1) to elect to be treated as an association taxable as a corporation for federal tax purposes, and (2) to make an election under § 168(h)(6)(F)(ii) of the Internal Revenue Code (Code) to not be treated as a tax-exempt controlled entity.

FACTS

The information submitted states that X is a limited liability company. 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.

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 Z. X represented that Z is classified as a partnership for federal tax purposes. X was formed to serve as the general partner of Z. Z was formed to acquire, develop, construct, own, maintain, and operate property in a manner that qualifies for federal low-income housing tax credits under § 42 of the Code. Z acquired property in Year 1 and placed it in service during Year 2. At the time the property was acquired X prepared and signed an election under § 168(h)(6)(F)(ii) to be included with its tax return for the year in which the property was placed into service.

W acted as a co-developer and property manager for X. X mistakenly believed that W was handling tax matters related to their joint venture, including filing X's federal income tax return with the election under § 168(h)(6)(F)(ii) for X not to be treated as a tax-exempt controlled entity. X represents that due to a miscommunication with W regarding these responsibilities, X failed to timely file the election.

LAW AND ANALYSIS

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. Elections are necessary only when an eligible entity chooses to be classified initially as other than the default classification or when an eligible entity chooses to change its classification.

Section 301.7701-3(b)(1) provides that 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 that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing Form 8832 with the appropriate service center. Section 301.7701-3(c)(1)(iii) provides that this election will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified. The date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed.

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

Section 168(h)(6)(A) provides that, for purposes of § 168(h), if any property which 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 is treated as tax-exempt use property. 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). In the case of tiered partnerships and other entities, §168(h)(6)(E) applies similar rules. Under § 168(h)(6)(F)(ii), 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.

Under § 301.9100-7T(a)(2)(i) of the Procedure and Administration Regulations, a §168(h)(6)(F)(ii) election 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 301.9100-7T(a)(3)(i) provides that the § 168(h)(6)(F)(ii) election must be made by attaching a statement to the tax return for the taxable year for which the election is to be effective.

Section 301.9100-1(c) provides that the Commissioner of Internal Revenue has the 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 for which a regulation prescribes the due date. The § 168(h)(6)(F)(ii) election is a regulatory election.

Sections 301.9100-1 through 301.9100-3 provide the standards 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 a request for an extension of time for a regulatory election (other than automatic extensions of time 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) provides that a taxpayer is 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), a taxpayer will not be considered to have not 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)(1) provides that the Service will grant a reasonable extension of time only when doing so will not prejudice the interests of the Government. 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 facts submitted and representations made, we conclude that X has satisfied the requirements of §§ 301.9100-1 and 301.9100-3. As a result, X is granted an extension of time of 120 days from the date of this letter to file a Form 8832, Entity Classification Election, with the appropriate service center to elect to be treated as an association taxable as a corporation for federal tax purposes, effective Date. A copy of this letter should be attached to the Form 8832.

The facts and affidavits submitted by X indicate that X intended at the outset to make the § 168(h)(6)(F)(ii) election, that its failure to make the election on a timely-filed return was inadvertent, and that X is not using hindsight in requesting relief. Moreover, X requested this relief before failure to make the election was discovered by the Service. 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 such, based solely on the facts submitted and representations made, we conclude that X has satisfied the requirements of § 301.9100-3 for its request for an extension of time to make an election pursuant to § 168(h)(6)(F)(ii).

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 2. X must attach a copy of this letter ruling to its § 168(h)(6)(F)(ii) election statement.

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.

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

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

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

Richard T. Probst

By:

Richard T. Probst
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure

Copy for § 6110 purposes

cc: