



This letter ruling is being issued electronically in accordance with section 7.02(5) of Rev. Proc. 2025-1, 2025-1 I.R.B. 1, 34.

## FACTS

Taxpayer represents the facts are as follows:

Taxpayer is a limited liability company formed under the laws of State Z. Effective Date 2, Taxpayer is treated as a corporation for Federal income tax purposes. Prior to Taxable Year 1, Taxpayer was treated as a partnership for Federal tax purposes. Taxpayer uses an accrual method of accounting as its overall method of accounting and the calendar year as its annual accounting period. Tax-exempt Entity wholly owns Taxpayer.

Taxpayer owns 50-percent of LLC, which owns 90-percent and is a managing member of Partnership. Partnership is in the business of X. Partnership placed property into service in Taxable Year 1. The master lease agreement between LLC and Partnership stated:

No portion of the [Partnership property] is, or will be, tax-exempt use property (within the meaning of Code Section 168(h)).

Taxpayer engaged Advisor to prepare its Federal income tax return for Taxable Year 1. Due to a miscommunication with the previous tax preparer, Advisor was unaware that Taxpayer required a § 168(h)(6) election for its Federal income tax return for Taxable Year 1. Accordingly, Advisor prepared a Form 1065, *U.S. Return of Partnership Income*, for Taxable Year 1 on behalf of Taxpayer, which was timely filed. Following this filing, Advisor learned through communications with Taxpayer and Taxpayer's previous tax preparer that the § 168(h)(6) election was required for Taxpayer.

Advisor communicated the error to Taxpayer. As a result, Taxpayer filed Form 8832, *Entity Classification Election*, requesting relief for a late change of entity classification election on Date 3. Advisor confirmed by telephone that the entity classification for Taxpayer to be taxed as a C Corporation was approved and effective as of Date 2. Subsequently, Taxpayer submitted its letter dated Date 1, requesting this letter ruling.

Because Taxpayer is treated as a C corporation as of Date 2 and is wholly owned by Tax Exempt Entity, Taxpayer is a tax-exempt controlled entity within the meaning of § 168(h)(6)(F)(iii).

Finally, Taxpayer represents that, in requesting this letter ruling, it acted reasonably and in good faith because Taxpayer reasonably relied on the expertise of Advisor, and that granting an extension of time to make the election under § 168(h)(6)(F)(ii) will not prejudice the interests of the Government.

**RULING REQUESTED**

Taxpayer requests that the Internal Revenue Service grant it an extension of time under §§ 301.9100-1 and 301.9100-3 to file the election under § 168(h)(6)(F)(ii) to not be treated as a tax-exempt entity beginning with Taxable Year 1.

**LAW**

Section 167(a) provides that there shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear, and obsolescence of property used in the trade or business, or in the production of income. The depreciation deduction provided by § 167(a) for tangible property placed in service after 1986 is generally determined under § 168. Under § 168(g)(1)(B), 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 which 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 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.

Section 168(h)(6)(F)(i) provides that, in general, any tax-exempt controlled entity is treated as a tax-exempt entity for purposes of §§ 168(h)(5) and (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).

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)(1), a § 168(h)(6)(F)(ii) election must be made in accordance with the rules provided in §§ 301.9100-7T(a)(2) and (3).

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

Section 301.9100-1(c) provides that the Commissioner of Internal Revenue (the Commissioner) has the discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election.

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

Section 301.9100-1(b) defines a regulatory election as one whose due date is prescribed by regulations in the Federal Register, a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. Because the due date of the election is prescribed by § 301.9100-7T(a)(2)(i), the requested § 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 a taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the Government.

### CONCLUSION

Based solely on the facts as represented and the applicable law, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Taxpayer is granted an extension of **60 calendar days** from the date of this letter ruling to file the election statement with its amended return containing the information required by § 301.9100-7T(a)(3) for the election to be effective in Taxable Year 1.

Taxpayer must attach a copy of this letter ruling to the election statement. Further, this letter ruling should be attached to all subsequent returns (and amended returns) for all taxable years to which this letter ruling is relevant. If Taxpayer files its amended return electronically, it may satisfy this requirement by attaching a statement to its amended return that provides the date and control number of this letter ruling. Pursuant to § 301.9100-7T(a)(3)(ii), a copy of this letter ruling and the § 168(h)(6)(F)(ii) election statement also should be attached to the Federal income tax returns of each of the tax-exempt shareholders or beneficiaries of Taxpayer.

The ruling contained in this letter is based upon information and representations submitted by 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 request for a ruling, 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 precedent.

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. 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.

Pursuant to the Form 2848, *Power of Attorney and Declaration of Representative*, on file, we are sending a copy of this letter to Taxpayer's authorized representative. We are also sending a copy of this letter ruling to the appropriate Service operating division official.

Sincerely,

Amy S. Wei  
Senior Technician Reviewer, Branch 7  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

cc: