

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201228019**
Release Date: 7/13/2012

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:
, ID No.
Telephone Number:

Index Number: 47.00-00, 9100.00-00

Refer Reply To:
CC:PSI:B05
PLR-143245-11
Date:
April 10, 2012

In Re:

Legend:

Taxpayer =

Tenant =

Corp 1 =

State A =

State B =

Property =

Accountant =

Lease =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Year =

a =

Dear :

This letter responds to your letter dated October 13, 2011, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations for Taxpayer to make the election under § 1.48-4 of the income tax regulations to treat Tenant as having purchased the Property.

According to the relevant facts submitted and representations made, Taxpayer is a State A limited partnership that owns the Property, a historic structure that was rehabilitated in a manner that qualifies for the historic rehabilitation credit under § 47 of the Code. Tenant, a State B limited partnership that is a percent owned by Corp 1, leases the Property from Taxpayer pursuant to the Lease.

On Date 1, Taxpayer and Tenant entered into an agreement to pass through the historic rehabilitation credits to Tenant (the "Agreement"). Under the Agreement, Taxpayer agreed to file an election pursuant to § 1.48-4 (the "Election") on or before the due date (including any extensions of time) of Tenant's federal income tax return for the year in which qualified rehabilitation expenditures were taken into account.

On Date 2, the Property was certified as ready to open for the property's intended purpose. Taxpayer applied for Part 3 approval from the National Park Service (NPS) in connection with the historic rehabilitation of the Property. The request stated that the Property was placed in service in Date 3. The NPS received the request on Date 4 and approved it on Date 5.

Accountant prepared Year Federal income tax returns for Taxpayer and Tenant. Accountant did not treat the building as placed in service in Year, and did not attach the Election to Taxpayer's Year return, although the Agreement was attached to the Lease and other documents.

Taxpayer requests an extension of time to make the Election.

LAW AND ANALYSIS

Section 38(a) allows a credit for the taxable year in an amount equal to the sum of 1) the business credit carryforwards carried to the taxable year, 2) the amount of the current year business credit, plus 3) the business credit carrybacks carried to the taxable year.

Under § 38(b)(1), the amount of the current year business credit includes the investment credit under § 46. The rehabilitation credit is a component of the § 46 investment credit.

Section 47(a)(2) of the Internal Revenue Code provides that the rehabilitation credit for any taxable year includes an amount equal to 20 percent of the qualified rehabilitation expenditures with respect to any certified historic structure.

Under § 47(b), qualified rehabilitation expenditures with respect to any qualified rehabilitated building shall be taken into account for the taxable year in which the qualified rehabilitated building is placed in service.

Section § 50(d), makes applicable rules similar to the rules of former § 48(d) (relating to certain leased properties). Under former § 48(d)(1), a person (other than a person referred to in former § 46(e)(1) who is a lessor of property may (at such time, in such manner, and subject to such conditions as are provided by regulations prescribed by the Secretary) elect with respect to any new section 38 property (other than property described in former § 48(d)(4)) to treat the lessee as having acquired such property.

Section 1.48-4(a)(1) of the income tax regulations provides that a lessor of property may elect to treat the lessee of property as having purchased the property for purposes of the credit allowed by § 38.

Section 1.48-4(a)(1)(iv) requires a statement of election to treat the lessee as a purchaser to be filed in the manner and within the time provided in § 1.48-4(f) or (g). Section 1.48-4(f)(1) provides the information that must be included in the election statement.

Under § 1.48-4(f)(2), the election statement must be filed with the lessee on or before the due date (including any extensions of time) of the lessee's return for the lessee's taxable year during which possession of the property is transferred to the lessee.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I.

Section 301.9100-1(b) provides that the term "election" includes an application for relief in respect of tax.

Sections 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an 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. A request for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

CONCLUSIONS

Based solely on the facts and the representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Taxpayer's election will be considered timely filed for purposes of § 1.48-4(f) if it is filed within 120 days of the date of this letter. A copy of this letter should be sent to the appropriate service center with a request that it be attached to Taxpayer's amended tax return for Year. A copy is enclosed for that purpose.

Except as specifically set forth above, we express no opinion concerning the federal income tax consequences of the facts described above under any other provisions of the Code. In particular, we express no opinion on whether Taxpayer's rehabilitation expenditures qualify for the historic rehabilitation credit, or whether the Lease is a lease for federal income tax purposes.

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.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative. Also, we are sending a copy of this letter to the appropriate SB/SE official.

The rulings contained in this letter are 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 rulings, it is subject to verification on examination.

Sincerely,

Curt G. Wilson
Associate Chief Counsel
(Passthroughs and Special Industries)

By: _____
Nicole Cimino
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter
Copy for section 6110 purposes

cc: