

Internal Revenue Service
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Washington, DC 20224
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Person To Contact:
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Telephone Number:

Refer Reply To:

CC:ITA:B04 - PLR-132625-03

Date:

November 4, 2003

Legend

A=

B=

C=

D=

M=

date 1 =

date 2 =

date 3 =

date 4 =

Dear [redacted data]:

This is in reply to the private letter ruling request in which the taxpayer, A, has requested an extension of time, under the provisions of § 301.9100-1 of the Income Tax Regulations, to make an election under §168(h)(6)(F)(ii) of the Internal Revenue Code.

Facts

A, a taxable entity, was formed under the laws of State M, on date 1. A's current sole shareholder is B, a taxable entity. C and D, both nonprofit corporations under § 501(c)(3), each own 50% of B.

On date 2, A filed for an automatic extension of 6 months to file its income tax return for the tax year ended date 3. A retained a tax professional to file its tax return for the year ended date 3. On

date 4, A's corporate tax return was timely filed pursuant to the automatic extension, but the preparer failed to attach the election under § 168(h)(6)(F)(ii). An affidavit submitted by the preparer confirms this omission.

The taxpayer is requesting administrative relief, under § 301.9100-3, for the inadvertent failure to attach the election under § 168(h)(6)(F)(ii) to the timely filed Form 1120 rendering it a taxable entity for purposes of § 168(h)(5) and (6).

Law and Analysis

Section 168(h)(6)(F)(ii) permits a tax-exempt controlled entity, as defined in § 168(h)(6)(F)(iii), to elect to be treated as a taxable entity for purposes of the application of § 168(h)(5) and (6).

Section 301.9100-7T of the Procedure and Administration Regulations provides that 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. However, if the taxpayer establishes to the satisfaction of the Commissioner reasonable cause for failure to file the election with the taxpayer's original return, the taxpayer may file the election with an amended return or claim for credit or refund.

Section 301.9100-3 provides that requests for extensions of time for regulatory elections will be granted when the taxpayer provides evidence 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(c), however, states that the Commissioner 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 (taking into account the time value of money).

Conclusion

Based on all of the facts and information submitted and the representations made, it is our determination that A acted reasonably and in good faith as described in § 301.91003(b)(1), and granting the requested relief will not prejudice the interests of the government. Accordingly, A is granted an extension of time of 30 days from the date of this letter ruling to file an amended return making the election under § 168(h)(6)(F)(ii). The taxpayer should attach this letter to its amended return.

Caveats

The ruling contained in this letter is 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 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. In particular, we express no opinion as to whether the taxpayer qualifies to make the election set forth in § 168(h)(6)(F)(ii). This ruling simply extends the period of time in which the taxpayer may make such election.

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. Enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under §6110.

In accordance with the provisions of a Power of Attorney on file with this office, the original of this letter ruling is being sent to the taxpayer's authorized representative, and a copy is being sent to the taxpayer.

Sincerely,

Robert A. Berkovsky
Branch Chief
Office of Associate Chief Counsel (Income Tax & Accounting)

Enclosure