

This refers to Taxpayer's request for an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election under § 168(h)(6)(F)(ii) of the Internal Revenue Code (the "Election"). The material information submitted for consideration is summarized below.

Taxpayer is a w% member of LLC1. LLC1 acts as the managing member of LLC2, whose business purpose is to develop an affordable apartment project. LLC2 was formed on Date 3 with LLC1 and Company as the original members. LLC2 is the owner of Phase 1, which consists of a community service facility and affordable housing units. Company and Charity are the co-developers. Charity's mission is to develop affordable rental housing for low income persons.

In year 1, LLC 3 presented Charity and its related entity with an opportunity to participate in a low income housing tax credit project in an area of City that needed additional affordable housing units. Charity agreed, and was admitted to LLC1 as a w% non-manager member with LLC3 as the x% manager member.

In year 2, Company advised Charity that Company had set up the initial structure incorrectly. Rather than Charity being a w% non-manager member in LLC1, there should have been a taxable entity, wholly owned by Charity, set up to be the member since Charity would not be in a position to make an election under § 168(h)(6)(F)(ii) of the Internal Revenue Code, which the investors had required as a condition of their investment. Thus, with Company's assistance, Charity formed Taxpayer and transferred Charity's interest in LLC1 to Taxpayer on Date 1.

In year 3, Taxpayer, Charity, and Company began Phase 2, a similarly structured low income housing tax credit project. Company required the Taxpayer's accountants to execute a document describing their understanding that Taxpayer must make the § 168(h)(6)(F)(ii) election with the return for Taxpayer's fiscal year ending Date 4. No similar certification was required for Phase 1, and no explicit advice was provided regarding when the election should be made.

Taxpayer is a "tax-exempt controlled entity" within the meaning of § 168(h)(6)(F)(iii). Under the agreement, Taxpayer was required to make an election under § 168(h)(6)(F)(ii) on the return it filed for the taxable year ending Date 2. The taxpayer acknowledges that it did not file a timely return for the year ending Date 2, which prohibited it from properly making the § 168(h)(6)(F)(ii) election on a timely filed return for that year. However, Taxpayer represents that it intended to make the election and that the failure to do so was inadvertent.

Section 168(h)(6)(A) provides that, for purposes of § 168(h), if (1) any property that is not tax-exempt use property is owned by a partnership with both a tax-exempt entity and a person who is not a tax-exempt entity as partners, and (2) any allocation to the tax-exempt entity of partnership items is not a qualified allocation, then an amount equal

to the tax-exempt entity's proportionate share of such property is treated as tax-exempt use property.

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

Section 168(h)(6)(F)(ii) provides that, for purposes of § 168(h)(6), a tax-exempt controlled entity may elect not to be treated as a tax-exempt entity. Such an election is irrevocable and will bind all tax-exempt entities holding an interest in the tax-exempt controlled entity.

Section 301.9100-7T(a)(2)(i) requires elections under § 168(h)(6)(F)(ii) to be made by the due date of the tax return for the first taxable year for which the election is to be effective. Therefore, the Election is a regulatory election under § 301.9100-1(b).

Under § 301.9100-1(c) and § 301.9100-3(a), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election under all subtitles of the Internal Revenue Code, except subtitles E, G, H, and I, provided the taxpayer demonstrates 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.

Based on the facts and information submitted, we conclude that Taxpayer acted reasonably and in good faith and granting relief will not prejudice the interests of the government. Accordingly, the requirements of the regulations for granting relief in this case have been satisfied and we grant an extension of time for Taxpayer to file the Election.

Taxpayer must file an amended federal income tax return for year 3, and attach to the amended return the § 168(h)(6)(F)(ii) election and the information set forth in § 301.9100-7T(a)(3). Taxpayer should also attach a copy of this letter to the return. In addition, pursuant to § 301.9100-7T(a)(3)(ii), a copy of the election statement should also be attached to the federal income tax returns of each of the tax-exempt shareholders or beneficiaries of Taxpayer.

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.

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.

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 request for rulings, it is subject to verification on examination.

Sincerely,

Michael J. Montemurro
Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)