

Internal Revenue Service

Department of the Treasury
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In Re:

Date:
May 18, 2012

LEGEND:

Taxpayer =

Tenant =

Property =

State =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

Dear :

This letter responds to your letter, dated November 17, 2011, and subsequent correspondence, submitted on behalf of Taxpayer, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for Taxpayer to make the election under § 1.48-4 of the Income Tax Regulations for Year 1.

FACTS

This information submitted and the representations made are as follows: Taxpayer is a State limited liability company that owns the Property. Taxpayer rehabilitated the Property in a manner that qualified for the rehabilitation credit under § 47 of the Internal Revenue Code for qualified rehabilitation expenditures incurred in connection with the certified rehabilitation of a certified historic structure. Tenant is a State limited liability company that leases the Property from Taxpayer pursuant to a Date 1 lease agreement.

On Date 2, Taxpayer and Tenant entered into an agreement to pass through the rehabilitation credits relating to the Property to Tenant. The agreement required Taxpayer to file an election under § 1.48-4(f). Taxpayer relied on an attorney and a certified public accountant (“Tax Advisors”) to include the election with Taxpayer’s Year 1 tax return. However, Tax Advisors failed to timely file the election with Taxpayer’s Year 1 tax return.

On Date 3, Taxpayer’s failure to file the election was discovered. Taxpayer requests an extension of time to make the election for Year 1.

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. Under § 46(1), the investment credit includes the rehabilitation credit under § 47.

Section 47(a) provides that the rehabilitation credit for any taxable year is the sum of (1) 10 percent of the qualified rehabilitation expenditures with respect to any qualified rehabilitated building other than a certified historic structure, and (2) 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 property). 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 § 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) provides that a lessor of property may elect to treat the lessee of the 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(a) provides that an extension of time is available for elections that a taxpayer is otherwise available to make. However, the granting of an extension of time is not a determination that the taxpayer is otherwise eligible to make the election.

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

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.

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 the grant of relief will not prejudice the interests of the government.

CONCLUSION

Based solely on the information submitted and the representations made, 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 attached to Taxpayer's amended tax return for Year 1. A copy is enclosed for that purpose.

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 on whether Taxpayer's rehabilitation expenditures qualify for the rehabilitation credit under § 47 or whether the lease is valid 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 R. Cimino
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures:
Copy of this letter
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cc: