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Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Contact Person:

Telephone Number:

In Reference to:

CC:DOM:IT&A:6//PLR-122545-98

Date:

MAY 21 1999

This is in response to your letter dated December 15, 1998, requesting, on behalf of the above-named taxpayer, an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election under section 168(h)(6)(F)(ii) of the Internal Revenue Code (the "Election"). Additional information was submitted in letters dated April 15 and May 6, 1999. The material information submitted for consideration is summarized below.

Subsidiary is a for-profit corporation organized under the laws of State A. Subsidiary is a wholly owned subsidiary of Parent. Parent is a non-profit corporation and a tax-exempt entity under section 501(c).

As a wholly owned subsidiary of Parent, Subsidiary is a tax-exempt controlled entity within the meaning of section 168(h)(6)(F)(iii). Under section 168(h)(6)(F)(ii), Subsidiary may elect not to be treated as a tax-exempt controlled entity for purposes of section 168(h)(6). Subsidiary, however, did not make a timely election and is therefore seeking relief under sections 301.9100-1 and 301.9100-3 of the regulations.

Section 168(h)(6)(A) provides that, for purposes of section 168(h), if i) any property which is not tax-exempt use property is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, and ii) any allocation to the tax-exempt entity of partnership items is not a qualified allocation, then an amount equal to such tax-exempt entity's proportionate share of such property shall be treated as tax-exempt use property.

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

Section 168(h)(6)(F)(ii) provides that, for purposes of section 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 section 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 section 301.9100-1(b).

Under section 301.9100-1(c) and section 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 that the taxpayer demonstrates to the satisfaction of the Commissioner that:

1) The taxpayer acted reasonably and in good faith, and,

2) Granting relief will not prejudice the interests of the government.

Based on the facts and information submitted, including the affidavits submitted and representations that have been made, we conclude that Subsidiary acted reasonably and in good faith and that granting relief will not prejudice the interests of the government. Accordingly, we grant an extension of time, until 30 days from the date of issuance of this letter, for Subsidiary to file the Election.

Subsidiary must file an amended federal income tax return for its tax year ending on Date F and attach thereto the Election and information set forth in section 301.9100-7T(a)(3). Subsidiary should also attach a copy of this letter to the amended return. In addition, pursuant to section 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 Subsidiary.

We express no opinion as to the tax consequences for filing the Election late under provisions of any other sections of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Election late that are not specifically set forth in the above ruling. For purposes of granting this relief we relied on certain statements and representations made by the taxpayer and/or their representatives. However, the District Director should verify all essential facts. Moreover, notwithstanding that an extension is granted to file the Election, any penalties and interest that would otherwise be applicable continue to apply.

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file in this office, we are sending a copy of this letter to your authorized representative.

Sincerely yours,

Assistant Chief Counsel
(Income Tax and Accounting)

By _____
Irwin A. Leib
Deputy Assistant Chief Counsel

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