

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200943001**  
Release Date: 10/23/2009

Third Party Communication:  
Not applicable  
Person To Contact:  
, ID No.  
Telephone Number:

Index Number: 47.00-00, 9100.00-00

Refer Reply To:  
CC:PSI:5  
PLR-103268-09  
Date:  
July 17, 2009

Legend

- Taxpayer =
- State =
- Building =
- Year 1 =
- Year 2 =
- Year 3 =
- Year 4 =
- Property =
- District =
- A =

Dear :

This letter responds to a letter submitted by your authorized representative dated December 31, 2008, requesting an extension of time pursuant to §301.9100-3 of the Procedure and Administration Regulations to file an application for certification of historic status with the United States Department of Interior for purposes of claiming rehabilitation tax credits under § 47(a)(2) of the Internal Revenue Code.

According to the facts submitted, Taxpayer purchased Building, a residential property, in Year 2. Building is part of Property, located in State. Building was built in Year 1, and is listed in the National Register of Historic Places.

Building is made up of A sections, and is being renovated in A phases. Building will be used as an apartment/condominium property. It is represented that Phase I of the renovation process began in Year 2, and that Taxpayer coordinated the historic preservation project with the applicable regulatory agencies including the State Office of Parks, Recreation and Historic Preservation. Phase I was completed and that portion of

the property placed in service in Year 3. Phase II was completed and placed in service in Year 4.

Taxpayer failed to file Part I of the Historic Preservation Certification Application with the Department of the Interior prior to placing Phases I and II in service because Taxpayer was unaware of the requirement for prior approval pursuant to §1.48-12(d)(1) of the Income Tax Regulations. Taxpayer believed that since Building was already listed on the National Register of Historic Places, the filing of Part I was not required.

#### LAW AND ANALYSIS

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.

Section 47(c)(3)(A) provides that the term "certified historic structure" means any building (and its structural components) that (i) is listed on the National Register, or (ii) is located in a registered historic district and certified by the Secretary of the Interior as being of historic significance to the district.

Section 1.48-12(d)(1) provides that a building shall be considered to be a certified historic structure at the time it is placed in service if the taxpayer reasonably believes on that date the building will be determined to be a certified historic structure and has requested on or before that date a determination from the Department of the Interior that such building is a certified historic structure within the meaning of the historic rehabilitation credit provisions, and the Department of Interior later determines that the building is a certified historic structure.

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 application will be considered timely filed for purposes of § 1.48-12(d)(1). 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 the taxable years ending Year 3 and Year 4. 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.

We are sending a copy of this letter to the SB/SE official.

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 the power of attorney on file, a copy of this letter is being sent to Taxpayer's authorized representative.

Sincerely,

*Curt G. Wilson*

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

Enclosures (2)

Copy of this letter  
Copy for section 6110 purposes

cc: