

Private Letter Ruling 200029026 - IRC Section 42

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Dear

This letter responds to your authorized representative's letter dated December 29, 1999, submitted on behalf of Partnership and Agency, requesting an extension of time to make an election under § 42(g)(1) of the Internal Revenue Code pursuant to § 301.9100-1 of the Procedure and Administration Regulations.

Partnership did not make a proper election for Project under § 42(g)(1) for its taxable year ending on y. Section 42(g)(1) provides that the term "qualified low-income housing project" means any project for residential rental property if the project meets the requirements of § 42(g)(1)(A) or (B), whichever is elected by the taxpayer. The project meets the requirements of § 42(g)(1)(A) if 20 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income. The project meets the requirements of § 42(g)(1)(B) if 40 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income. Any election under § 42(g)(1), once made, shall be irrevocable.

Section 301.9100-7T(b) of the temporary Income Tax Regulations, provides that, for elections under the Tax Reform Act of 1986, the election under § 42(g)(1) must be made for the taxable year in which the project is placed in service and shall be made in the certification required to be filed pursuant to § 42(I)(1). Section 301.9100-7T(a)(4)(i) provides that the election under § 42(g)(1) is irrevocable.

Section 42(I)(1)(D) provides that following the close of the 1st taxable year in the credit period with respect to any qualified low-income building, the taxpayer shall certify to the Secretary (at such time and in such form and in such manner as the Secretary prescribes) the election made under § 42(g) with respect to the qualified low-income housing project of which such building is a part. In the case of a failure to make the certification required by the preceding sentence on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, no credit shall be allowable by reason of § 42(a) with respect to such building for any taxable year ending before such certification is made.

Under § 1.42-IT(e)(1), a taxpayer is required to complete the Form 8609 on which a housing credit agency made the applicable housing credit allocation and submit a copy of such Form 8609 with its Federal income tax return for each year in the compliance period.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election.

Section 301.9100-1(b) defines the term "regulatory election" as including an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Under § 301.9100-1 (c), the Commissioner has discretion to 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 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

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.

Requests for relief under 4 301.9100-3(a) will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

In this case, good cause has been shown and the requirements of 44 301.9100-1 and 301.9100-3 have been met. Accordingly, based on the above law and the representations submitted, Partnership is granted an extension of time to make the election under 4 42(g)(1) for Project. Partnership filed an amended partnership return on x. Consequently, Partnership must mail a copy of this letter within 30 days from the date of this letter to the Service Center where it filed its return to associate this letter with its amended return. In addition, a copy of this letter along with a copy of the election on Form 8609, "Low-Income Housing Credit Allocation Certification," should be sent to the District Director. A copy of this letter is enclosed for this purpose.

No opinion is expressed or implied regarding the application of any other provisions of the Code or regulations. Specifically, we express no opinion on whether Partnership's low-income housing project otherwise qualifies for the low-income housing tax credit under § 42.

This ruling is directed only to the taxpayer who requested 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 Partnership's authorized legal representative.

Sincerely yours,

Paul F. Kugler  
Assistant Chief Counsel  
(Passthroughs and Special Industries)