

Internal Revenue Service
Department of the Treasury
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

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Person to Contact:
Telephone Number:
Refer Reply To: CC:PSI:5 -- PLR-104116-03
Date: APR 29, 2003

Legend:
Taxpayer =
Project =
Date 1 =
x =
y =
z =

Dear [redacted data]:

This letter responds to your letter dated January 16, 2003, submitted on behalf of Taxpayer, requesting an extension of time to make an election under § 42(f)(1) of the Internal Revenue Code pursuant to § 301.9100-1 of the Procedure and Administration Regulations.

According to the information submitted, Taxpayer, a limited partnership, received an allocation of § 42 low-income housing credit for Project in x. Taxpayer placed the Project in service in y. Taxpayer inadvertently failed to make a proper election for Project under § 42(f)(1) for the taxable year ending on Date 1 to begin the credit period in z.

Section 42(f)(1) defines the credit period of any building as the period of 10 taxable years beginning with the taxable year in which the building is placed in service, or at the taxpayer's irrevocable election, the succeeding taxable year, but in either case only if the building is a qualified low income building at the close of the first year of the credit period.

Section 301.9100-8(b) provides that the election under § 42(f)(1) generally must be made for the taxable year in which the project is placed in service, or the succeeding taxable year if the §42(f)(1) election is made to defer the start of the credit period, and must be made in the certification required to be filed pursuant to § 42(I)(1) and (2). Section 301.9100-8(a)(4)(i) provides that the election under § 42(f)(1) is irrevocable.

Section 42(I)(1)(E) provides that following the close of the first 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) such other information as the Secretary may require. 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, Low Income Housing Credit Allocation Certification, 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 six 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 § 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 the instant case, based solely on the facts submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been met. Accordingly, Taxpayer is granted an extension of time to make the election under § 42(f)(1) for the Project by filing within 60 days from the date of this letter for all open taxable years an amended Form 8609 that includes the intended election. The amended Form 8609 is to be filed with the Service Center where Taxpayer's return is filed. In addition, a copy of this letter along with a copy of the Form 8609 should be sent to the Area Director, Compliance, [redacted data]. A copy of this letter is enclosed for this purpose. By making the election for the Project under § 42(f)(1), Taxpayer is electing to begin the credit period in calendar year z. Accordingly,

Taxpayer must amend its calendar year y and z returns, including the schedule K-1's of its partners as is necessary to reflect the proper amount of section 42 credits.

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 Taxpayer's low-income housing project otherwise qualifies for the low-income housing tax credit under § 42.

This ruling is directed only at 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, the original of this letter is being sent to you, as Taxpayer's authorized representative, and a copy is being sent to Taxpayer.

Sincerely,

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special
Industries)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes

cc: