

Internal Revenue Service
Department of the Treasury
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Number: 200348018
Release Date: 11/28/2003
U.I.L.: 42.10-05, 9100.01-00
Person to Contact:
Telephone Number:
Refer Reply To: CC:PSI:5 -- PLR-126595-03
Date: AUG 22 2003

Legend:
Taxpayer =
Year 1 =
Director =

Dear [redacted data]:

This letter responds to a letter dated March 31, 2003, submitted on behalf of Taxpayer, requesting an extension of time pursuant to § 301.9100-1 of the Procedure and Administration Regulations to post a surety bond under § 42(j)(6) of the Internal Revenue Code in order to avoid recapture of the low-income housing credit under § 42(a).

According to the information submitted, Taxpayer intended to file Form 8693, Low-Income Housing Credit Disposition Bond, and to post surety bonds for various properties disposed of during Year 1. However, Taxpayer inadvertently failed to file Form 8693 or post the surety bonds.

Section 42(f)(4) provides that if a building (or an interest therein) is disposed of during any year for which the low-income housing credit under § 42(a) is allowable, the credit for the year must be allocated between the parties. In any such case, proper adjustments must be made on the application of § 42(j).

Section 42(j)(1) provides that if (A) as of the close of any taxable year in the compliance period, the amount of the qualified basis on any building with respect to the taxpayer is less than (B) the amount of the basis as of the close of the preceding taxable year, then the taxpayer's tax for the taxable year must be increased by the credit recapture amount. However, under § 42(j)(6) the taxpayer will be discharged from liability for any additional tax if (A) the taxpayer furnishes to the Secretary a bond for a satisfactory amount and period, and (B) it is reasonably expected that the building will continue to be operated as a low-income credit building for the remainder of its compliance period.

Guidance on the amount of bond considered satisfactory by the Secretary and the period of the bond required is provided in Rev. Rul. 90-60, 1990-2 C.B. 3. This revenue ruling specifies that if a taxpayer furnishes a bond under § 42(j)(6) with respect to the disposition of an interest in a qualified low-income building, the taxpayer will be treated, solely for purposes of applying § 42(j) with respect to the disposition, as if the taxpayer had not disposed of the interest. Instead, the taxpayer's recapture (if any) with respect to the disposed-of interest will be determined under the rules of § 42(j) by deeming the taxpayer to continue to own the disposed-of interest and by determining the qualified basis for the deemed interest in accordance with the rules of § 42(c). The taxpayer will not, however, be treated as claiming any additional low-income housing credit with respect to the disposed of interest for any period following the disposition. The bond must be provided for the remainder of the 15-year compliance period after the disposition plus an additional 58 months.

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) provides that the term regulatory election means an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. Announcement 94-97, 1994-3 I.R.B. 87, notified the public of Form 8693, and specified that Form 8693 should be submitted to the Internal Revenue Service within 60 days of a disposition of a low-income housing credit building, or interest therein, on which the taxpayer wants to avoid recapture of the credit.

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 for a taxpayer to make a regulatory or statutory 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.

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 the granting of 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(j)(6) for the dispositions by filing Forms 8693 within 45 days from the date of this letter. The Forms 8693 along with a copy of this letter are to be filed with the Internal Revenue Service, Examination Branch, Attn: LIHTC UNIT-DP 8235, P.O. Box 331, Bensalem, PA 19020. A copy of this letter is enclosed for this purpose. In addition, if and when Taxpayer receives a copy of the approved Forms 8693 back from the LIHTC Unit, a copy of this letter along with a copy of each approved Form 8693 should be sent to Director.

Nothing in this ruling shall be construed to relieve Taxpayer from the obligation of having the bonds approved by the IRS Bond-Approving Official. This ruling merely grants Taxpayer an extension of time to make the election to post bonds, which must be for the period of time remaining in the 15-year compliance period after the date of disposition plus an additional 58 months. The determination of whether to approve the bonds rests within the sole discretion of the Bond-Approving Official. Also, although Taxpayer will be deemed to continue to own the disposed-of interest for purposes of § 42(j) upon approval of the bonds, Taxpayer is not allowed low-income housing credits with respect of the disposed-of interest for any period following the disposition.

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 the low-income housing projects qualified, or continue to qualify, for the low-income housing 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, a copy of this letter is being sent to Taxpayer's authorized representative.

Sincerely,

Heather C. Maloy

Associate Chief Counsel
(Passthroughs and Special Industries)
Enclosures (2): Copy of this letter
Copy for § 6110 purposes
cc: