

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:5

PLR-153355-04

Date:

February 07, 2005

In Re:

LEGEND:

Taxpayer =

Project =

Director =

x =

Dear :

This letter responds to your authorized representative's letter dated September 22, 2004, and subsequent correspondence, submitted on behalf of the Taxpayer, requesting an extension of time to elect under section 42(g)(3)(D) of the Internal Revenue Code to identify buildings as part of a multiple-building project and to make an election under section 42(g)(1) pursuant to section 301.9100 of the Procedure and Administration Regulations.

Taxpayer intended to elect the 40/60 minimum set-aside under section 42(g)(1)(B), but through the error of its tax preparer, Taxpayer failed to properly make this election for the Project for its taxable year ending on x. Further, Taxpayer did not make a proper election under section 42(g)(3)(D) to identify each building in the Project as part of a multiple-building project for its taxable year ending on x.

Section 42(g)(1) defines the term “qualified low-income housing project” as any project for residential rental property if the project meets the requirements of section 42(g)(1)(A) or (B), whichever is elected by the taxpayer. The project meets the requirements of section 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 section 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.

Section 42(g)(3)(D) provides that, for purposes of section 42, a project will be treated as consisting of only 1 building unless, before the close of the first calendar year in the project period (as defined in section 42(h)(1)(F)(ii), each building which is (or will be) part of such project is identified in such form and manner as the Secretary may provide.

Section 301.9100-7T(b) of the temporary Procedure and Administration Regulations provides that for elections under the Tax Reform Act of 1986, the election under section 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 section 42(l)(1). Section 301.9100-7T(a)(4)(i) provides that the election under section 42(g)(1) is irrevocable.

Section 42(l)(1) 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) (D) the election made under section 42(g) with respect to the qualified low-income housing project of which such building is a part and (E) 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 due 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 section 42(a) with respect to such building for any taxable year ending before such certification is made.

Under section 1.42-1(h) of the Income Tax Regulations, a taxpayer must file a completed Form 8609, “Low Income Housing Credit Allocation Certification,” with its Federal income tax return for each of the 15 taxable years 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 published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Under section 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in sections 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 section 301.9100-2.

Requests for relief under section 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 sections 301.9100-1 and 301.9100-3 have been met. Accordingly, Taxpayer is granted an extension of time to make the 40/60 minimum set-aside election under section 42(g)(1)(B) for the Project and to identify each of the buildings in the Project as part of a multiple-building project under section 42(g)(3)(D) by filing within 45 days from the date of this letter for all open taxable years amended Forms 8609 that include the intended elections. Attached to the amended Forms 8609 must be the statement required by the instructions for line 8b of Form 8609 for multiple-building projects. The amended Forms 8609 are to be filed with the Service Center where Taxpayer files its return. In addition, a copy of this letter along with copies of the amended Forms 8609 (including the attached statement) should be sent to the 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 Taxpayer’s low-income housing project otherwise qualifies for the low-income housing tax credit under section 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 Taxpayer's authorized representative.

Sincerely,

Heather Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter
Copy for section 6110 purposes

cc: