

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200728007**
Release Date: 7/13/2007

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 42.07-03, 9100.01-00

Person To Contact:
, ID No.

Telephone Number:

In Re:

Refer Reply To:
CC:PSI:B5
PLR-104108-07

Date:
March 30, 2007

Legend:

Taxpayer =
LP1 =
LP2 =
LP3 =
Director =

Date 1 =

Dear :

This letter responds to your letter dated December 28, 2006, requesting an extension of time pursuant to § 310.9100 of the Procedure and Administration Regulations, to file Forms 8693, Low-Income Housing Disposition Bond, to post a bond under section 42(j)(6) of the Internal Revenue Code to avoid recapture of low-income housing tax credits under section 42(a) of the Internal Revenue Code.

Under the facts represented in your letter, Taxpayer failed to file completed Forms 8693, to post disposition bonds because Taxpayer was unaware that a disposition of low-income housing tax credit property would result in a recapture of tax credits. As a result, Taxpayer did not timely file the required Forms 8693 for the low-income housing property interests that were sold on Date 1.

Section 42(j)(1) provides that if (A) as of the close of any taxable year in the compliance period, 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 section 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. The revenue ruling specifies that if a taxpayer furnishes a bond under section 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, 1994-31, 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 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 present 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

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met. Accordingly, Taxpayer is granted an extension of time to post disposition bonds pursuant to section 42(j)(6) with respect to the disposition of Taxpayer's interests in LP1, LP2, and LP3. As a result, Taxpayer will be treated solely for purposes of applying § 42(j) with respect to the disposition, as if Taxpayer had not disposed of the interests. Instead, the Taxpayer's recapture (if any) with respect to the disposed-of interests will be determined under the rules of § 42(j) by deeming the Taxpayer to continue to own the disposed-of interests and by determining the qualified basis for the deemed interests 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 interests for any period following the disposition. The bonds must be provided for the remainder of the 15-year compliance period after the disposition plus an additional 58 months. The election to post disposition bonds pursuant to § 42(j)(6) is reported by filing the required completed Forms 8693 within 60 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, P.O. Box 331, Attn: LIHC Unit, DP 607 South, Philadelphia Campus, Bensalem, PA 19020. Copies of this letter are enclosed for this purpose. In addition, if and when Taxpayer receives a copy of any approved Form 8693, a copy of such letter along with a copy of the approved Form 8693 should be sent to Director.

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 properly qualified, or continues to qualify, for the low-income housing 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 Taxpayer's authorized representatives.

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2): Copy of this letter
 Copy for § 6110 purposes

cc: