

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B05 – PLR-147705-07

Date:

February 13, 2008

LEGEND

Partnership =

Address =

Month =

Date =

Office =

Dear :

This letter responds to your letter dated October 3, 2007, and subsequent correspondence submitted on your behalf by your authorized representative, requesting an extension of time pursuant to § 301.9100-1 of the Procedure and Administration Regulations to file Form 8693, Low-Income Housing Disposition Bond, to post bond under § 42(j)(6) of the Internal Revenue Code in order to avoid recapture of the low-income housing credit under § 42(a).

Under the facts represented in your letter and subsequent correspondence, in Month you purchased a limited partnership interest in Partnership. Partnership owned a building located at Address which qualified for low-income housing tax credits under § 42. On Date, prior to the end of the building's 15-year compliance period, the building was sold by Partnership to an investor. You represent that, for purposes of § 42, the investor intends to continue to operate the building as a qualified low-income building for the remainder of the building's 15-year compliance period.

You did not timely file Form 8693 for the disposition of your interest in the building located at Address that was sold by Partnership on Date. You have made representations explaining why Form 8693 was not timely filed.

Section 42(j)(1) provides that if (A) as of the close of any taxable year in the compliance period, the qualified basis of 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 qualified 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) for the disposition of an interest in a qualified low-income building, the taxpayer will be treated, solely for purposes of applying § 42(j) to the disposition, as if the taxpayer had not disposed of the interest. Instead, the taxpayer's recapture (if any) for 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 for the disposed of interest for any period following the disposition. The bond must be provided for the remainder of the building's 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 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 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 met. Accordingly, you are granted an extension of time to post a disposition bond pursuant to § 42(j)(6) for the disposition of your interest in the building resulting from the sale of the building by Partnership. As a result, you will be treated, solely for purposes of applying § 42(j) to the disposition, as if you had not disposed of the interest. Instead, your recapture (if any) for the disposed-of interest will be determined under the rules of § 42(j) by deeming you 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). You will not however, be treated as claiming any additional low-income housing credit for 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. The election to post a disposition bond under § 42(j)(6) is reported by filing the required completed Form 8693 within 60 days from the date of this letter. The Form 8693 along with a copy of this letter is 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 you receive a copy of the approved Form 8693, a copy of this letter along with a copy of the approved Form 8693 should be sent to Office.

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 property qualified, or continues 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 your authorized representative.

Sincerely,

/s/ William P. O'Shea

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

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

cc: