

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201606026**
Release Date: 2/5/2016

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 9100.01-00, 42.00-00,
142.04-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B05
PLR-134273-15

In Re:

Date:
November 02, 2015

LEGEND:

Taxpayer =

Project =

N =

BIN/Address =

Agency =

Dear :

This letter responds to Taxpayer’s authorized representative’s letter dated October 15, 2015, requesting an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election under § 42(i)(2)(B) of the Internal Revenue Code.

Project consists of N buildings identified by BIN/Address. According to information submitted, Taxpayer, through inadvertence, failed to make an election under § 42(i)(2)(B) intended for all N buildings in Project for which Forms 8609 were issued by Agency, consistent with Taxpayer’s intent not to exclude from the eligible basis of these buildings the proceeds of tax-exempt bond obligations.

Section 42(i)(2)(A) provides that for purposes of § 42(b)(1), a new building shall be treated as federally subsidized for any taxable year if, at any time during such taxable year or any prior taxable year, there is or was outstanding any obligation the interest on which is exempt from tax under § 103 the proceeds of which are or were used (directly or indirectly) with respect to such building or the operation thereof. Section 42(i)(2)(B) provides that a tax-exempt obligation shall not be taken into account under § 42(i)(2)(A) if the taxpayer elects to exclude from the eligible basis of the building the proceeds of such obligation.

Section 42(l)(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 information as the Secretary may require.

Section 301.9100-7T(b) of the temporary Procedure and Administration Regulations provides that the election under § 42(i)(2) 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 § 42(l)(1). Section 301.9100-7T(a)(4)(i) provides that an election under § 42(i)(2) is irrevocable.

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 a regulatory election. Section 301.9100-1(b) defines an “election” as an application for relief in respect of tax, and a “regulatory election” as 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. Section 301.9100-1(c) provides that 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 certain regulatory elections (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except 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.

Section 301.9100-3(a) provides that applications for relief that fall within § 301.9100-3 will be granted when the taxpayer provides sufficient evidence to establish that the taxpayer acted reasonably and in good faith, and that granting such relief will not prejudice the interests of the Government. Section 301.9100-3(b) provides when a taxpayer is deemed to have acted reasonably and in good faith. Section 301.9100-3(c) provides when the interests of the Government are prejudiced. Section 301.9100-3(e) provides that the taxpayer must provide evidence that satisfies the requirements of § 301.9100-3(a) and (b).

In the instant case, based solely on Taxpayer's facts submitted and its 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 an election under § 42(i)(2)(B) not to exclude from the eligible basis of all N buildings in Project identified by BIN/Address the proceeds of tax-exempt bond obligations by filing within 120 days from the date of this letter amended Forms 8609 that include this intended election. The amended Forms 8609 (along with a copy of this letter) are to be filed with the Philadelphia Service Center at the address provided for the Service Center in that form. A copy of this letter is enclosed for this purpose.

No opinion is expressed or implied regarding the application of any other provision of the Code or Regulations. Specifically, we express no opinion on whether the Forms 8609 were timely or correctly filed, the effect of Taxpayer's election not to reduce basis under § 42(i)(2)(B) for any closed year, or whether Project otherwise qualifies for the low-income housing tax credits under § 42.

This ruling is directed only to the taxpayer requesting 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 with this office, copies of this letter are being sent to Taxpayer's authorized representatives.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: _____
CHRISTOPHER J. WILSON
Senior Counsel, Branch 5
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: