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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

In Re:

Refer Reply To:
CC:PSI:B05
PLR-141504-04
Date:
October 18, 2004

Taxpayer =

Project =

Year 1 =
Year 2 =

Dear :

This letter responds to your letter dated July 30, 2004, and subsequent correspondence, submitted on behalf of Taxpayer, requesting an extension of time to make elections under § 42(f)(1) and § 42(g)(1) of the Internal Revenue Code pursuant to § 301.9100-1 of the Procedure and Administration Regulations.

According to the information submitted, Taxpayer, a limited partnership, placed Project in service in Year 1. Taxpayer inadvertently failed to make a timely election for each of the buildings in Project under § 42(f)(1) to begin the credit period in the succeeding taxable year, Year 2. Taxpayer also inadvertently failed to make a timely election for each of the buildings in Project under § 42(g)(1).

Section 42(f)(1) defines the credit period of any building as the period of 10 taxable years beginning with the taxable year in which the building is placed in service, or at the taxpayer's irrevocable election, the succeeding taxable year, but in either case only if the building is a qualified low-income building at the close of the first year of the credit period.

Section 42(g)(1) defines qualified low-income housing project as any project for residential rental property if the project meets the requirements of § 42(g)(1)(A) or (B), whichever is elected by the taxpayer. The project meets the requirements of § 42(g)(1)(A) if 20 percent or more of the residential units 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 § 42(g)(1)(B) if 40 percent or more of the residential units are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income.

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 § 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 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 § 42(a) with respect to such building for any taxable year ending before such certification is made.

Section 1.42-1(h) of the Income Tax Regulations provides that a completed Form 8609, Low-Income Housing Credit Allocation Certification, must be filed with the owner's Federal income tax return for each of the 15 taxable years of the compliance period. Failure to comply with this requirement for any taxable year after the first taxable year in the credit period will be treated as a mathematical or clerical error for purposes of § 6213(b)(1) and (g)(2).

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

Section 301.9100-8(b) provides that the election under § 42(f)(1) generally must be made for the taxable year in which the project is placed in service, or the succeeding taxable year if the § 42(f)(1) election is made to defer the start of the credit period, and must be made in the certification required to be filed pursuant to § 42(l)(1) and (2). Section 301.9100-8(a)(4)(i) provides that the election under § 42(f)(1) is irrevocable.

Sections 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations 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, revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

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 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 § 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 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 §§ 301.9100-1 and 301.9100-3 have been met. Accordingly, Taxpayer is granted an extension of time to make the elections under § 42(f)(1) and § 42(g)(1) for each building in Project by filing within 60 days from the date of this letter for all open taxable years amended Forms 8609 that include the intended elections. The amended Forms 8609 are to be filed with the Service Center where Taxpayer’s return is filed. In addition, a copy of this letter along with a copy of the Forms 8609 should be sent to the Area Director, Compliance, SB/SE Area 8, Nashville, Tennessee. A copy of this letter is enclosed for this purpose.

By making the election for the buildings in Project under § 42(f)(1), Taxpayer is electing to begin the credit period in Year 2. Accordingly, Taxpayer must amend it’s Federal income tax returns, including the Schedules K-1, for Year 1 and all subsequent years, as is necessary to reflect the proper amount of § 42 credits.

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 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 representatives.

Sincerely,

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

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

cc: