



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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Dear _____ :

This letter responds to your request for information dated October 20, 2004, requesting a waiver that will allow the City of Detroit Planning and Development Department to allocate commercial revitalization expenditure amounts to Taxpayer for a commercial building placed in service in the Detroit renewal community in 2002. We hope that you find the following general information to be helpful.

Section 1400I of the Internal Revenue Code allows a taxpayer to elect to recover the cost of a qualified revitalization building using a more accelerated method than is otherwise allowable under section 168. Under section 1400I(a), this election is made in the year in which the building is placed in service. Pursuant to section 1400I(c), the taxpayer may make this election only to the extent that qualified commercial revitalization expenditure amounts are allocated to the building.

Under section 1400I(d)(1) and (2), the commercial revitalization agency for each state is permitted to allocate up to \$12 million of commercial revitalization expenditure amounts with respect to each renewal community located within the state for each calendar year after 2001 and before 2010.

However, section 1400I(e)(1)(A) provides that, notwithstanding any other provision of section 1400I, the commercial revitalization expenditure amount with respect to any building is zero unless such amount was allocated pursuant to a qualified allocation plan (as defined in section 1400(e)(2)) of the commercial revitalization agency that is approved by the governmental unit of which such agency is a part. Accordingly, the allocation must be made pursuant to a qualified allocation plan. Section 1400I does not contain any provision that allows the Internal Revenue Service to waive this requirement.

Under section 1400I(d)(4), an allocation under section 1400I is made at the same time and in the same manner as under the low-income housing credit provisions of section 42(h)(1) and (7). Section 42(h)(1)(B) provides that an allocation generally must be made not later than the close of the calendar year in which the building is placed in service. Revenue Procedure 2003-38, 2003-1 C.B. 1017, provides the types of allocations of commercial revitalization expenditure amounts that a commercial revitalization agency of a state (as defined in section 1400I(d)(3)) may make. These allocations are: (1) an allocation in the calendar year in which a qualified revitalization building is placed in service; or (2) a carryover allocation with respect to a qualified revitalization building that is placed in service by a taxpayer not later than the close of the second calendar year following the calendar year in which the allocation is made. In addition, a commercial revitalization agency may enter into a binding commitment to allocate a specified dollar amount to a qualified revitalization building in the calendar year in which the building is placed in service.

Based on the information in your letter, Taxpayer's commercial building was placed in service in the Detroit renewal community in 2002. However, the qualified allocation plan for the Detroit renewal community was not approved until November 2003. As a result, there was not a qualified allocation plan in effect for the year in which Taxpayer's building was placed in service. Accordingly, the commercial revitalization expenditure amount for any building in the Detroit renewal community is zero for 2002 and the City of Detroit Planning and Development Department could not make an allocation of commercial revitalization expenditure amounts to Taxpayer's commercial building.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See section 2.04 of Revenue Procedure 2005-1, 2005-1 I.R.B. 1, 7. If you have any additional questions, please contact our office at (202) 322-3110.

Sincerely yours,

Kathleen Reed
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(Passthroughs & Special Industries)