

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
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PLR-118739-08  
Date:  
July 10, 2008

Taxpayer =

Project =

Year 1 =

Year 2 =

Dear :

This letter responds to your letter dated March 28, 2008, and subsequent correspondence, submitted on behalf of Taxpayer, requesting an extension of time to make elections under ' 42(f)(1) of the Internal Revenue Code pursuant to ' 301.9100-1 of the Procedure and Administration Regulations.

According to the information submitted, Taxpayer, a partnership for federal income tax purposes, placed Project in service in Year 1. Taxpayer inadvertently failed to make timely elections for Project under ' 42(f)(1) to begin the credit period in the succeeding taxable year, Year 2.

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 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.

Specifically, the election under ' 42(f)(1) is made pursuant to the certification requirement of ' 42(l)(1)(E), which 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 other information as the Secretary may require.

Section 1.42-1(h) of the Income Tax Regulations provides that a completed Form 8609, Low-Income Housing Credit Allocation and Certification, must be filed by the building owner with the IRS. The requirements for completing and filing Form 8609 are addressed in the instructions to the form. Completion of the relevant portions of Form 8609 satisfy the certification requirement of ' 42(l)(1) and (2).

The instructions to Form 8609 provide that the building owner must make a one-time submission of Form 8609 to the Low-income Housing Credit (LIHC) Unit at the IRS Philadelphia campus. The building owner must file the original of the form with the unit no later than the due date (including extensions) of its first tax return with which it is filing Form 8609-A, Annual Statement for Low-income Housing Credit.

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) 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 election under ' 42(f)(1) for Project by filing within 60 days from the date of this letter amended Forms 8609 that include the intended election. The amended Forms 8609 are to be filed with the Internal Revenue Service, P.O. Box 331, Attn: LIHC Unit, DP 607 South, Philadelphia Campus, Bensalem, PA 19020. In addition, a copy of this letter along with a copy of the amended Forms 8609 should be sent to the Internal Revenue Service, Attn: PSP, 1100 Commerce Street, Dallas, TX 75242. A copy of this letter is enclosed for this purpose.

By making the election for Project under ' 42(f)(1), Taxpayer is electing to begin the credit period in Year 2. Accordingly, Taxpayer must amend its Federal income tax returns, including the Forms 8609-A and the Schedules K-1's, 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 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