

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 8609 with the LIHC 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 the grant of 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) for the buildings identified by BINs by filing within 120 days from the date of this letter amended Forms 8609 that include the intended elections. The amended Forms 8609 (along with a copy of this letter) must be filed with the LIHC Unit at the following address provided in the instructions to Form 8609:

Department of the Treasury
Internal Revenue Service Center
Philadelphia, PA 19255-0549

By making the elections under § 42(f)(1) for the buildings identified by BINs, Taxpayer is electing to begin the credit periods for the buildings identified by BINs in Year 2. Accordingly, Taxpayer must file its Federal income tax returns, including the Forms 8609-A and 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 the buildings identified by BINs otherwise qualify for the low-income housing credit under § 42.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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: