

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202140013**
Release Date: 10/8/2021
Index Number: 25.00-00, 9100.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:FIP:B05
PLR-112375-21

Date:
July 12, 2021

LEGEND:

- Issuer =

- State =

- Year 1 =

- Year 2 =

- Year 3 =

- Year 4 =

- a =

- b =

- Date 1 =

- Date 2 =

- Date 3 =

Dear :

This is in response to your request for an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to file an election made under § 25(c)(2)(A)(ii) of the Internal Revenue Code (the Code).

Facts and Representations

Issuer is authorized by State to issue qualified mortgage bonds under § 143 and mortgage credit certificates under § 25 to facilitate the development, rehabilitation, and financing of low- to moderate-income housing. Issuer has issued mortgage credit certificates under a succession of programs, the most recent being the program that will expire at the end of Year 4 or earlier exhaustion of mortgage credit certificate issuance capacity (the “Year 2 MCC Program”).

In Year 1, State approved an allocation to Issuer of volume cap under § 146 for Issuer’s qualified mortgage bond programs. Issuer decided to carry forward \$a of its Year 1 allocation for qualified mortgage bonds and timely filed Form 8328 Carryforward Election of Unused Private Activity Bond Volume Cap with the Internal Revenue Service (the Service) to effect a carryforward election under § 146(f) with respect to Year 1 volume cap, of which \$b remained unused at the end of Year 3.

In contemplation of the expiration of the Year 2 MCC Program, Issuer on Date 1, resolved to establish its Year 3 mortgage credit certificate program (the “Year 3 MCC Program”). Issuer wishes to convert the unused \$b of Year 1 qualified mortgage bond volume cap to mortgage credit certificate issuance authority by filing a late election pursuant to §25(c)(2)(A)(ii) not to issue \$b of qualified mortgage bonds (the “MCC Election”). In furtherance of this objective, the Date 1 resolution establishing the Year 3 MCC Program also authorized the MCC Election in connection with the Year 3 MCC Program.

The MCC Election should have been filed with the Service prior to the end of Year 3, but the disruption caused by the Coronavirus Disease 2019 pandemic (the “Pandemic”) resulted in Issuer missing this deadline. Changes to Issuer’s operating practices in response to the Pandemic precipitated unprecedented changes to Issuer’s daily operations. For example, although Issuer continues to operate its programs, with limited exceptions, Issuer’s staff has been working remotely since Date 2. This and other changes to Issuer’s operating practices in response to the Pandemic have had some adverse impacts, including Issuer’s inadvertent failure to timely file with the Service the MCC Election. Issuer will file a late election pursuant to § 25(c)(2)(A)(ii) of the Code not to issue \$b of qualified mortgage bonds under the carryforward of Year 1 volume cap allocation with respect to the Year 2 MCC Program with the Service within 60 days of the date of issuance of a favorable ruling.

After discovering the failure to file the MCC Election, Issuer promptly, on Date 3, submitted a ruling request for an extension of time to file the MCC Election. As of Date 3, the Service had not discovered the failure to timely file the MCC Election. Issuer is not using hindsight in requesting relief, and no specific facts have changed since the due date for the MCC Election that make the MCC Election advantageous; rather, Issuer is seeking to make and file an election which Issuer intended to make. No taxpayers affected by the MCC Election will have a lower tax liability than if the MCC Election had been filed timely. As of Date 3, the IRS had not discovered the failure to timely file the MCC Election.

Law and Analysis

Section 25 allows a state or political subdivision to establish a program for a particular calendar year to issue mortgage credit certificates in lieu of qualified mortgage bonds under § 143 that it is authorized to issue. Mortgage credit certificates issued under § 25 provide borrowers Federal tax credits with respect to interest paid or accrued on eligible home mortgage loans.

Under § 25(c)(2)(A)(ii), one requirement of a qualified mortgage credit certificate program is that the issuing authority elects, in the form and manner prescribed by the Secretary, not to issue an amount of private activity bonds that it may otherwise issue during such calendar year under § 146. Pursuant to § 1.25-4T(c)(2) of the Income Tax Regulations, the issuer must file the election with the IRS on or before the earlier of the date of distribution of the mortgage credit certificates or the end of the calendar year for which the issuer has authority to issue qualified mortgage bonds.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides that the Commissioner in exercising the Commissioner's discretion may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election (defined in § 301.9100-1(b) as an election whose due date is prescribed by regulations published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 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 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements for automatic extensions in § 301.9100-2 must be made under the rules of § 301.9100-3. Pursuant to § 301.9100-3(a), requests for relief will be granted if the taxpayer provides evidence establishing to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides, in part, that, except as provided in § 301.9100-3(b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requested relief under § 301.9100-3 before the failure to make the regulatory election is discovered by the IRS. Section 301.9100-3(b)(3)(ii) and (iii) provide, however, that the taxpayer has not acted in good faith if it was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or used hindsight in requesting relief.

Section 301.9100-3(c)(1)(i) provides, in part, that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability than the taxpayer would have had if the election had been timely (taking into account the time value of money).

After discovering the inadvertent failure to file the MCC Election, Issuer promptly, on Date 3, submitted a ruling request for an extension of time to file the MCC Election. As of Date 3, the Service had not discovered the failure to timely file the MCC Election. At no point, did Issuer decide to not file the MCC Election. Nor did Issuer use hindsight in requesting an extension to file the MCC Election. If the requested relief is granted, neither Issuer nor any of the borrowers receiving mortgage credit certificates will have a lower tax liability than if the election had been timely made.

Based on all of the facts and representations submitted, we conclude Issuer acted reasonably and in good faith upon discovery of the mistake. We also conclude that the interests of the government will not be prejudiced if we grant the relief requested by Issuer.

Conclusion

Under § 301.9100-3, a filing of the MCC Election with the Service by Issuer within 60 days after the date of issuance of this ruling is deemed timely.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any transaction or item discussed or referenced in this letter. 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 a Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

The ruling contained in this letter is based upon information and representations submitted by Issuer and accompanied by penalty of perjury statements executed by the appropriate parties. While this office has not verified any of the materials submitted in support of the request for a ruling, it is subject to verification upon examination.

Sincerely,

Associate Chief Counsel
(Financial Institutions and Products)

By: _____
Johanna Som de Cerff
Senior Technician Reviewer, Branch 5

cc: