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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B05
PLR-100377-22
Date:
June 16, 2022

In Re:

LEGEND

Taxpayer =

Year =

A =

BIN1 =

BIN2 =

BIN3 =

BIN4 =

BIN5 =

BIN6 =

Address =

Dear :

This letter responds to your authorized representative's letter dated December 29, 2021, and subsequent correspondence, submitted on behalf of Taxpayer, requesting an extension of time, pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations, to file amended Forms 8609, Low-Income Housing Credit Allocation and Certification, with respect to the elections related to §§ 42(f)(1), 42(g)(1), and 42(g)(3)(D) of the Internal Revenue Code (Code) for buildings in a housing project intended to be a qualified low-income housing project under § 42.

According to the information submitted and representations made, Taxpayer, a limited partnership for federal income tax purposes, owns and operates a multi-building housing project. The project is located at Address. The project received an allocation of the low-income housing credit under § 42. The project consisted of A buildings for § 42 purposes. The buildings identified by BIN1, BIN2, BIN3, BIN4, BIN5, and BIN6 are part of the project. Taxpayer placed the buildings identified by BIN1, BIN2, BIN3, BIN4, BIN5, and BIN6 in service in Year.

Taxpayer intended, as reflected by contemporaneous and other documents, to elect the 40-60 minimum set-aside on Forms 8609 for the buildings identified by BIN1 and BIN2. In preparing Forms 8609 for the buildings identified in BIN1 and BIN2, however, Taxpayer inadvertently failed to check the box for line 10c to make the election for the 40-60 minimum set-aside.

In preparing Forms 8609 for the buildings identified in BIN3 and BIN4, Taxpayer correctly checked the multiple-building election on line 8b. However, Taxpayer inadvertently failed to attach the required accompanying informational statements to Forms 8609 that had been prepared for BIN3 and BIN4.

Taxpayer intended, as reflected by contemporaneous and other documents, to begin the credit period for the buildings identified by BIN5 and BIN6 in Year, the year the buildings were placed in service. In preparing Forms 8609 for the building identified by BIN5 and BIN6, however, Taxpayer inadvertently checked line 10a to begin the credit period for the first year after the buildings were placed in service.

After filing with the Internal Revenue Service (IRS) Forms 8609 for the buildings identified in BIN1, BIN2, BIN3, BIN4, BIN5, and BIN6, Taxpayer discovered the inadvertent errors during a review of its files.

Section 42(f)(1) defines credit period as, with respect to any building, 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.

Section 42(g)(1) defines the term "qualified low-income housing project" as any project for residential rental property if the project meets the requirements of § 42(g)(1)(A), (B), or (C), 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 in the project 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 in the project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income. The project generally meets the requirements of § 42(g)(1)(C) if 40 percent or more (25 percent or more in the case of a project described in § 142(d)(6)) of the residential units in the project are both rent restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit. Any election under § 42(g)(1), once made, is irrevocable.

Section 42(g)(3)(D) provides that a low-income housing project shall be treated as consisting of only one building unless, before the close of the first calendar year in the project period (as defined in § 42(h)(1)(F)(ii)), each building which is (or will be) part of such project is identified in such form and manner as the Secretary may provide.

In the instructions to Form 8609, the IRS requires each building that is (or will be) part of a multiple building project to be identified by attaching a statement to the Form 8609 including the name and address of the project and each building in the project, the BIN of each building in the project, the aggregate dollar amount for the project, and the credit allocated to each building in the project.

Section 301.9100-8(b) provides that the election under § 42(f)(1) must generally be made for the taxable year in which the building 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 pursuant to § 42(l)(1).

Section 301.9100-7T(b) provides, in part, that the election under § 42(g)(1) is to be made in the certification required to be filed pursuant to § 42(l)(1).

Section 42(l)(1) describes the requisite certifications with respect to any qualified low-income building for the first taxable year of the credit period (first-year certifications). In the case of a failure to make the required certification on the date prescribed for it, unless it is shown that the failure is due to reasonable cause and not to willful neglect, no credit is to be allowable by reason of § 42(a) for the building for any taxable year ending before the certification is made.

Section 1.42-1(h) of the Income Tax Regulations provides, in part, that, unless otherwise provided in forms or instructions, a completed Form 8609 (or any successor form), which contains the first-year certifications, must be filed by the building owner with the IRS. The instructions to Form 8609 states, in relevant part, that a building owner must make a one-time submission of Form 8609 to the Low-Income Housing Credit (LIHC) Unit at the IRS Philadelphia campus (Service Center) no later than the due date (including extensions) of the first tax return with which the building owner 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 published in the Federal Register, or a 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 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.

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 amend the following Forms 8609 for the Project: (1) Forms 8609 for the buildings identified in BIN1 and BIN2 for the purpose of checking the box for line 10c to make the election under § 42(g)(1) for the minimum set-aside; (2) Forms 8609 for the buildings identified in BIN3 and BIN4 for the purpose of attaching the required informational statements to those forms as part of the multiple-building election under § 42(g)(3)(D); and (3) Forms 8609 for the buildings identified by BIN5 and BIN6 for the purpose of checking the box for line 10a so that the taxpayer does not make the election under § 42(f)(1) to begin the credit period for the first year after the buildings were placed in service. The amended Forms 8609 must be filed within 120 days from the date of this letter. The amended Forms 8609 (along with copies 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

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any provisions of the Code or regulations. In particular, we express or imply no opinion on whether the Forms 8609 for the project were timely or correctly filed for purposes other than the elections related to §§ 42(f)(1), 42(g)(1), and 42(g)(3)(D), or whether the project is a qualified low-income housing project and any buildings in the project qualify for the low-income housing credit under § 42.

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

The ruling contained in this letter is based on the information submitted and representations made by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By: _____
James A. Holmes
Senior Counsel, Branch 5
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:
Copy for section 6110 purposes

cc: