

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B5
PLR-115140-22

Date:
December 22, 2022

In Re:

LEGEND

Taxpayer =

Year 1 =

Year 2 =

BIN =

Address =

Dear :

This letter responds to your authorized representative's letter dated August 1, 2022, submitted on behalf of Taxpayer, requesting an extension of time to make an election under § 42(g)(1) of the Internal Revenue Code (Code) pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

According to the information submitted, Taxpayer owns a single-building low-income housing project (Project) that was placed in service in Year 1 and elected to begin the credit period in Year 2. The building identification number associated with the Project is BIN. The Project is located at Address.

Taxpayer intended, as evidenced by Taxpayer's contemporaneous documentation, to make the average income minimum set-aside election for the Project. However, on the Form 8609, Low-Income Housing Credit Allocation and Certification, Taxpayer

submitted to the Internal Revenue Service (IRS), Taxpayer inadvertently failed to make such election.

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 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 301.9100-7T(b) of the temporary Procedure and Administration Regulations 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 for any qualified low-income building following the close the first taxable year in the credit period (first-year certifications). In particular, § 42(l)(1)(D) provides that, following the close of the first taxable year in the credit period for any qualified low-income building, the taxpayer is to certify to the Secretary (at the time and in the form and in the manner as the Secretary prescribes) the election made under § 42(g) for the qualified low-income housing project of which the building is a part. In the case of a failure to make the required certification on the prescribed date, unless it is shown that the failure is due to reasonable cause and not to willful neglect, no credit is 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 state, in relevant part, that a building owner must make a one-time submission of Form 8609 to the Low-Income Housing Credit Unit at the IRS Philadelphia campus 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 make the election under § 42(g)(1)(C) for the Project by filing within 120 days from the date of this letter an amended Form 8609 that includes the intended election. The amended Form 8609 (along with a copy of this letter) is to be filed with the Philadelphia campus at the address provided in the instructions to the form. A copy of this letter is enclosed for this purpose.

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 Form 8609 for the Project was timely or correctly filed for purposes other than the election under § 42(g)(1), or whether the Project is a qualified low-income housing project and the building in the Project qualifies 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, a copy of this letter is being sent to your authorized representative.

Sincerely,

HOLLY PORTER
Associate Chief Counsel
(Passthroughs & Special Industries)

By: _____
Barbara J. Campbell
Senior Technical Reviewer, Branch 5
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):
Copy of this letter
Copy for § 6110 purposes

cc: