

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

Telephone Number:

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Date:

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Legend:

Taxpayer =

Project =

Date 1 =

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Director =

Year 1 =

Year 2 =

Dear :

This letter responds to your letter dated December 8, 2003, and subsequent correspondence, submitted on behalf of Taxpayer, requesting an extension of time to make an election under § 42(i)(2)(B) of the Internal Revenue Code pursuant to § 301-9100-1 of the Procedure and Administration Regulations.

Taxpayer, through the error of its external tax advisor, did not make a proper election for Project under § 42(i)(2)(B) for the taxable year ending on Date 1.

Section 42(i)(2)(A) provides that generally, a new building shall be treated as federally subsidized for any taxable year, if at any time during such taxable year or and prior taxable year, there is or was outstanding and obligation the interest on which is exempt from tax under § 103, or any below market Federal loan, the proceeds of which are or were used (directly or indirectly) with respect to such building or the operation thereof. Section 42(i)(2)(B) provides that a loan or tax-exempt obligation shall not be taken into account under subparagraph (A) if the taxpayer elects to exclude from the eligible basis of the building the principal amount of any such loan and the proceeds of any such tax-exempt obligation.

Section 301-9100-7T(b) of the temporary Procedure and Administration Regulations provides that the election under § 42(i)(2) must be made for the taxable year in which the project is placed in service and shall be made in the certification required to be filed pursuant to § 42(l)(1). Section 301-9100-7T(a)(4)(i) provides that the election under § 42(i)(2) is irrevocable.

Section 42(l)(1)(E) 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 information as the Secretary may require.

Under § 1.42-1(h) of the Income Tax Regulations, a taxpayer is required to complete the Form 8609, "Low Income Housing Credit Allocation Certification," and submit a copy of such Form 8609 with its Federal income tax return for each of the 15 years in the compliance period.

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(i)(2)(B) for Project by filing within 60 days from the date of this letter for all affected taxable years an amended Form 8609 that includes the intended election. The amended Form 8609 is to be filed with the Service Center where Taxpayer's return is filed. In addition, a copy of this letter along with a copy of the Form 8609 should be sent to Director. A copy of this letter is enclosed for this purpose. By making the election for the Project under § 42(i)(2)(B), Taxpayer is electing to reduce its eligible basis by \$a. Accordingly, Taxpayer must amend its Year 1 and Year 2 Federal income tax returns, including the schedule K-1s of its partners as is necessary to reflect the proper amount of section 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 Taxpayer's low-income housing project otherwise qualifies for the low-income housing tax 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.

In accordance with the power of attorney on file, a copy of this letter is being sent to Taxpayer and to Taxpayer's second authorized representative.

Sincerely,

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special
Industries)

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

cc: