

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Date: February 11, 2005

**LEGEND**

Taxpayer =

Project =

Date 1 =

Office =

Dear :

This letter responds to your authorized representative's letter dated November 16, 2004, submitted on behalf of Taxpayer, requesting an extension of time to make an election under § 42(g)(1) of the Internal Revenue Code pursuant to § 301.9100-1 of the Procedure and Administration Regulations.

Taxpayer intended to elect for Project the 40/60 minimum set-aside under § 42(g)(1), but Taxpayer failed to properly make this election for its taxable year ending Date 1.

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) or (B), 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 such project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income (the 20/50 minimum set-aside). The project meets the requirements of § 42(g)(1)(B) if 40 percent or more of the residential units are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income (the 40/60 minimum set-aside).

Section 301.9100-7T(b) of the temporary Procedure and Administration Regulations provides that for elections under the Tax Reform Act of 1986, the election under § 42(g)(1) 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(g)(1) is irrevocable.

Section 42(l)(1)(D) 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) the election made under § 42(g) with respect to the qualified low-income housing project of which such building is a part. In the case of a failure to make the certification required by the preceding sentence on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, no credit shall be allowable by reason of § 42(a) with respect to such building for any taxable year ending before such certification is made.

Under § 1.42-1(h) of the Income Tax Regulations, a completed Form 8609, Low Income Housing Credit Allocation Certification,<sup>o</sup> must be filed with the owner's Federal income tax return for each of the 15 taxable years of 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<sup>o</sup> 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 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 good cause has been shown and 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) for the Project by filing within 45 days from the date of this letter for all open 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 files its return. In addition, a copy of this letter along with a copy of the Form 8609 should be sent to Office. A copy of this letter is enclosed for this purpose.

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 Taxpayer's low-income housing project otherwise qualifies for the low-income housing tax credit under § 42.

This ruling is directed only at the taxpayer who requested it. Section 6110(k)(3) of the Internal Revenue Code 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's authorized representative.

Sincerely,

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

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