

Internal Revenue Service

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Washington, DC 20224

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Date:

March 2, 2004

LEGEND

Taxpayer =

Project =

Y =

Director =

Dear :

This letter responds to your letter dated December 16, 2003, 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 of the Procedure and Administration Regulations.

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

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 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.

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 § 1.42-1T(e)(1) of the temporary Income Tax Regulations, a taxpayer is required to complete the Form 8609, "Low Income Housing Credit Allocation Certification," on which a housing credit agency made the applicable housing credit allocation and submit a copy of such Form 8609 with its Federal income tax return for each year 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 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 the requirements of §§ 301.9100-1 and 301.9100-3 have been met. Accordingly, Taxpayer is granted an extension of time to make the 40/60 minimum set-aside election under § 42(g)(1)(B) 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 Director. 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 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 Taxpayer's second authorized representative.

Sincerely,

Heather Maloy

Heather Maloy
Associate Chief Counsel
(Passthroughs and Special
Industries)

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

cc: