

Internal Revenue Service

Number: **201931001**

Release Date: 8/2/2019

Index Number: 25.00-00, 9100.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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PLR-105688-19

Date:

May 07, 2019

LEGEND:

Issuer =

State =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

a =

b =

Month 1 =

Month 2 =

Date 1 =

Date 2 =

Dear :

This is in response to your request for an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to file an election made under § 25(c)(2)(A)(ii) of the Internal Revenue Code (the Code).

Facts and Representations

Issuer is authorized by State to issue qualified mortgage bonds under § 143 and mortgage credit certificates under § 25 to facilitate the development, rehabilitation, and financing of low- to moderate-income housing. Issuer has issued mortgage credit certificates under a succession of programs, the most recent being the program that expired at the end of Year 3 (the “Year 2 MCC Program”).

In contemplation of the expiration of the Year 2 MCC Program, in Month 1, Issuer adopted a resolution establishing Issuer’s Year 4 mortgage credit certificate program (the “Year 4 MCC Program”) and foregoing the issuance of \$a of qualified mortgage bonds in order to allocate \$a of volume cap to the Year 4 MCC Program. Issuer wanted to make certain that it maintained the ability to offer mortgage credit certificates continuously as the Year 2 MCC Program expired and the Year 4 MCC Program started. Issuer provided timely public notice of the Year 4 MCC Program in Month 1 and the following month.

Also in Month 1, prior to the adoption of the resolution, Issuer’s bond counsel drafted a mortgage credit certificate election pursuant to § 25(c)(2)(A)(ii) for the Year 4 MCC Program (the “Year 4 MCC Election”). In Month 2, approximately five months after Month 1, while reviewing its volume cap utilization, Issuer discovered that the Year 4 MCC Election had not been filed with the Internal Revenue Service (IRS). Issuer’s bond counsel had inadvertently failed to timely file the Year 4 MCC Election on Issuer’s behalf.

After discovering the failure to file the Year 4 MCC Election, Issuer (1) filed a late Year 4 MCC Election with the IRS on Date 1, and (2) soon thereafter, on Date 2, submitted a ruling request for an extension of time to file the Year 4 MCC Election. The Year 4 MCC Election was filed approximately two months after the filing deadline for the election. The Year 4 MCC Election is an election not to issue \$b of qualified mortgage bonds under the carryforward of prior year (Year 1) volume cap with respect to the Year 4 MCC Program. No taxpayer will have a lower tax liability than if the Year 4 MCC election had been filed timely. As of Date 2, the IRS had not discovered the failure to timely file the Year 4 MCC Election.

Law and Analysis

Section 25 allows a state or political subdivision to establish a program for a particular calendar year to issue mortgage credit certificates in lieu of qualified mortgage bonds under § 143 that it is authorized to issue. Mortgage credit certificates issued under § 25

provide borrowers Federal tax credits with respect to interest paid or accrued on eligible home mortgage loans.

Under § 25(c)(2)(A)(ii), one requirement of a qualified mortgage credit certificate program is that the issuing authority elects, in the form and manner prescribed by the Secretary, not to issue an amount of private activity bonds that it may otherwise issue during such calendar year under § 146. Pursuant to § 1.25-4T(c)(2) of the Income Tax Regulations, the issuer must file the election with the IRS on or before the earlier of the date of distribution of the mortgage credit certificates or the end of the calendar year for which the issuer has authority to issue qualified mortgage bonds.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides that the Commissioner in exercising the Commissioner's discretion may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election (defined in § 301.9100-1(b) as an election whose due date is prescribed by regulations published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 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 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements for automatic extensions in § 301.9100-2 must be made under the rules of § 301.9100-3. Pursuant to § 301.9100-3(a), requests for relief will be granted if the taxpayer provides evidence establishing to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides, in part, that, except as provided in § 301.9100-3(b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requested relief under § 301.9100-3 before the failure to make the regulatory election is discovered by the IRS. Section 301.9100-3(b)(3)(ii) and (iii) provide, however, that the taxpayer has not acted in good faith if it was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or used hindsight in requesting relief.

Section 301.9100-3(c)(1)(i) provides, in part, that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability than the taxpayer would have had if the election had been timely (taking into account the time value of money).

After discovering the inadvertent failure to file the Year 4 MCC Election, Issuer filed the late Year 4 MCC Election on Date 1, and soon thereafter, on Date 2, submitted a ruling request for an extension of time to file the Year 4 MCC Election. As of Date 2, the IRS had not discovered the failure to timely file the Year 4 MCC Election. At no point, did

Issuer decide to not file the Year 4 MCC Election. Nor did Issuer use hindsight in requesting an extension to file the Year 4 MCC Election. If the requested relief is granted, neither Issuer nor any of the borrowers receiving mortgage credit certificates will have a lower tax liability than if the election had been timely made.

Based on all of the facts and representations submitted, we conclude Issuer acted reasonably and in good faith upon discovery of the mistake. We also conclude that the interests of the government will not be prejudiced if we grant the relief requested by Issuer.

Conclusion

Under § 301.9100-3, Issuer is granted an extension of time to Date 1, to file the Year 4 MCC Election. Therefore, the Year 4 MCC Election is deemed to have been filed timely.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any transaction or item discussed or referenced in this letter. This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

The ruling contained in this letter is based upon information and representations submitted by Issuer and accompanied by penalty of perjury statements executed by the appropriate parties. While this office has not verified any of the materials submitted in support of the request for a ruling, it is subject to verification upon examination.

Sincerely,

Associate Chief Counsel
(Financial Institutions and Products)

/S/

By: _____
Johanna Som de Cerff
Senior Technician Reviewer, Branch 5

cc: