

**Internal Revenue Service**

Number: **200726020**

Release Date: 6/29/2007

Index Number: 9100.01-00, 42.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B05

PLR-153332-06

Date:

March 12, 2007

In Re:

Legend:

Taxpayer =

Project =

Date 1 =

Dear :

This letter responds to your letter dated August 31, 2006, 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 an 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 section 42(i)(2)(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.

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 by the Taxpayer, 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 open taxable years through 2005 amended Forms 8609 that include the intended elections. [Note: Amended Forms 8609 are not required to be filed for taxable years after 2005]. The amended Forms 8609 for taxable years prior to 2005 are to be filed with the Service Center where Taxpayer files its return. The amended Forms 8609 for taxable year 2005 are to be filed at the following address:

Internal Revenue Service  
P. O. Box 331  
Attn: LIHC Unit, DP 607 South  
Philadelphia, PA 19020

In addition, a copy of this letter should be submitted with the amended Forms 8609. 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 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's authorized representative.

Sincerely,

/s/ William P. O'Shea

William P. O'Shea  
Associate Chief Counsel  
(Passthroughs and Special Industries)

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