**Internal Revenue Service**

Number: **201026012**
Release Date: 7/2/2010

Index Number: 42.00-00, 9100.01-00

Department of the Treasury
Washington, DC 20224

[Third Party Communication:
Date of Communication: Month DD, YYYY]
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Refer Reply To:
CC:PSI:B05
PLR-137220-09
Date:
December 10, 2009

**LEGEND**

Taxpayer =

Project =

City =

Agency =

Counsel =

a =

b =

c =

d =

e =

f =

g =

Dear

This letter responds to your authorized representative's letter dated August 5, 2009 requesting an extension of time pursuant to section 301.9100-3 of the Procedure and Administration Regulations to elect to identify Project buildings as part of a multiple-building project under § 42(g)(3)(D) of the Internal Revenue Code ("Code") on your federal income tax return for the taxable year ended December 31, 2007.

Facts:

Taxpayer makes the following representations:

Project consists of a dwelling units in b buildings located in City. The street address of each of the b buildings is provided in Attachment A, and is incorporated by reference into this ruling. All the units in Project are rented to households whose income satisfies the applicable restrictions under § 42. Taxpayer first claimed low-income housing credits with respect to Project for its 2007 taxable year.

Taxpayer acquired Project, which was an existing apartment rental project, in c. In connection with the acquisition, Taxpayer completed income verifications and certifications with respect to Project's households that planned to continue to reside in Project following rehabilitation. Following the acquisition, Taxpayer completed a rehabilitation of Project, electing to place the rehabilitation expenditures in service as of d. To facilitate the rehabilitation, Project households moved from the unit in which the households resided when the initial income verifications and certifications were completed. Following the rehabilitation, in some instances, a household returned to the household's original unit or to a unit in the same building as the household's original unit. In other instances, a household permanently moved to a unit that was not located in the building in which the household lived when the initial income verifications and certifications were completed. Taxpayer did not reverify and recertify the income of a household if the household moved permanently to a different building.

Following placement in service of the rehabilitation expenditures, Taxpayer prepared an application and submitted it to the Agency to request the Agency's issuance of IRS Forms 8609 "Low-Income Housing Credit Allocation and Certification," for Project buildings. On e, the Agency issued to Taxpayer f Forms 8609 with respect to Project buildings, one for the acquisition expenditures and one for the rehabilitation expenditures for each building.

In connection with Taxpayer's preparation in 2008 of its federal income tax return for the 2007 taxable year, Taxpayer consulted with Counsel regarding the completion of Part II of the IRS Form 8609, including whether to treat Project buildings as part of a multiple-building project pursuant to line 8b and the instructions thereto. Counsel advised Taxpayer that, because only income qualified households will occupy units, Taxpayer did not need to elect to treat Project buildings as part of a multiple-building project. Based on Counsel's advice, Taxpayer marked "no" for line 8b on the Forms 8609 and did not complete the additional information statement that the instructions to line 8b require. Taxpayer submitted the completed Forms 8609 to the Service.

Taxpayer discovered in g that because it selected "no" for line 8b on the Forms 8609 for Project buildings, it may have been required to perform recertifications and reverifications on those households that permanently moved to a unit that was located in a different building from the initial building in which the household's income had been certified and verified. Counsel did not advise Taxpayer of the potential need to perform income recertifications and reverifications if a household permanently moved to a different building from the building in which the household's initial income certification and verification were completed. Counsel also did not advise Taxpayer on whether the unit in which the household permanently resided would qualify as a low-income unit under § 42. Thus, Taxpayer relied on the incomplete information that Counsel provided regarding the multiple-building project election in selecting "no" to complete line 8b on the Forms 8609. If Counsel had advised Taxpayer to select "yes" on line 8b, Taxpayer would have prepared and included with the Forms 8609 the required statement that would have identified Project buildings as part of a multiple-building project.

Ruling Request

Taxpayer requests that the Service grant an extension of time to make the election under § 42(g)(3)(D) to treat all Project buildings as part of a multiple building project by filing within 90 days from the date of the Service's issuance of the requested ruling amended Forms 8609 that include this intended election.

Law and Analysis

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 in such project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income.

Section 42(g)(3)(D) provides that a project will consist of only one building unless, prior to the end of the first calendar year in the project period, a taxpayer identifies each building that will comprise the project in the form and the manner that the Secretary provides.

Section 42(l)(1) sets forth the certifications with respect to the first year of the credit period regarding any qualified low-income building that a taxpayer must certify to the Secretary (at such time and in such manner as the Secretary prescribes). Section 1.42-1(h) of the Income Tax Regulations requires that a taxpayer must file a completed IRS Form 8609 with the Service in accordance with the form's instructions. The election under § 42(g)(3)(D) with respect to a building is made on Part II of Form 8609 for the building and requires the inclusion of an accompanying informational statement.

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) provides, in part, 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, and such other information as the Secretary may require. In the case of a failure to make the certification required by § 42(l)(1) on the due date prescribed therefore, 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.

Section 1.42-1(h) provides, in part, that unless otherwise provided in forms or instructions, a completed Form 8609 (or any successor form) must be filed by the building owner with the IRS. The requirements for completing the Form 8609 are addressed in the instructions to the form.

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 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 Taxpayer's facts submitted and its 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(g)(3)(D) to treat all Project buildings as part of a multiple building project by filing within 90 days from the date of this letter amended Forms 8609 that includes this intended election. The amended Forms 8609 (along with a copy of this letter) are to be filed with the Philadelphia Service Center at the address provided for the Service Center in that form. 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 Project buildings otherwise qualify for low-income housing tax credits under § 42.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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

Sincerely,

*Curt G. Wilson*

Curt G. Wilson
Associate Chief Counsel
(Passthroughs & Special Industries)

cc: