Office of Chief Counsel
Internal Revenue Service

memorandum

Number: **200318026**
Release Date: 5/2/2003
CC:PSI:5/PLR-106206
UIL: 42.00-00; 42.02-02; 9100.01-00

date: January 14, 2003

to:

from: Harold Burghart, CC:PSI:5 /s/ Harold Burghart
Senior Advisor, Branch 5
Associate Chief Counsel (Passthroughs and Special Industries)

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subject: Withdrawal of Request for Private Letter Ruling Involving the Low-Income Housing Credit under § 42
PLR-106206-01

In accordance with § 8.07(2)(b) of Rev. Proc. 2000-1, 2000-1 C.B. 4, 33, this Chief Counsel Advice advises you that a taxpayer has withdrawn a request for a private letter ruling to make late elections of the appropriate percentage under § 42(b)(2)(A)(ii)(I) of the Internal Revenue Code pursuant to § 301.9100-3 of the Procedure and Administrative Regulations. In accordance with § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

LEGEND

Taxpayer =

Agency =

City X =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

o =

p =

q =

r =

On a, Agency approved b low-income housing project reservations of low-income housing credits under § 42 for the Taxpayer totaling $c. The b projects consisted of d buildings located in City X. In a letter dated e to Agency, the Taxpayer requested how to elect the f § 42 appropriate percentage of g% for the b projects. Agency informed the Taxpayer that it must follow the procedures in § 1.42-8 of the Income Tax Regulations to effect an election of the appropriate percentage under § 42(b)(2)(A)(ii)(I). On h, the Taxpayer mailed a letter notifying Agency that the Taxpayer requested to elect the f appropriate percentage rate of g%.

Section 1.42-8(a)(3) specifies that the time and manner for making an election under § 42(b)(2)(A)(ii)(I). In particular, § 1.42-8(a)(3)(ii) and (v) require that the binding agreement must reference § 42(b)(2)(A)(ii)(I) and be notarized by the 5th day following the end of the month in which the binding agreement was made. The Taxpayer's h

letter electing the f appropriate percentage of g% did not reference § 42(b)(2)(A)(ii)(I) and was not notarized.

The request for private letter ruling submission states that, when Agency received the h letter on i, the Agency immediately notified the Taxpayer the letter did not meet the requirements for electing the credit rate. The submission also states that the Taxpayer did not have a "clear understanding of what was necessary to meet these requirements." When asked to explain the substantial delay in requesting permission to make late elections under § 301.9100-3, the Taxpayer prepared a time line which claims that there was no verbal communication from Agency that the h attempt to elect the credit rate was invalid. However, an official at the Agency insisted that the Taxpayer was immediately notified that the h letter did not meet the requirements under § 1.42-8 for making an election under § 42(b)(2)(A)(ii)(I) for the appropriate percentage.

On j, the Taxpayer entered into k carryover agreements for the b projects with Agency for $c in § 42 credits. On l, the Taxpayer provided Agency with the placed-in-service and cost information to prepare Form 8609, "Low-Income Housing Credit Allocation Certification." In a letter dated m, Agency informed the Taxpayer that it had not met the requirements under § 1.42-8 to make a valid election under § 42(b)(2)(A)(ii)(I). Therefore, under § 42(b)(2)(A)(i), Agency used the appropriate percentages for the months in which the buildings were placed in service, n%, resulting in a decrease of $o in § 42 credits to $p.

The ruling requested by the Taxpayer involved permission to make late elections under § 42(b)(2)(A)(ii)(I) and § 1.42-8 for the higher g% appropriate percentage. In the request Agency agreed that it made a correctable administrative error under § 42(n)(4) and § 1.42-13(b) when it reduced the Taxpayer's k carryover allocation in q to reflect the lower amount of § 42 credits. The Taxpayer represented that the delay for requesting relief was due to the Taxpayer's and Agency's inability to agree on the wording describing the administrative error.

Granting relief under § 301.9100-3 would have not remedied the error unless the Internal Revenue Service also agreed under the administrative error provisions in § 1.42-13 to allow Agency to "borrow" § 42 credits from the then current year's credit ceiling. For relief under the administrative error provision we have required housing credit agencies to reduce their current year's credit ceiling by the dollar amount of the error, plus interest, compounded annually. The Taxpayer failed to make proper elections which ultimately affected the amount of the § 42 credit allocations.

The Agency claimed that the Taxpayer was notified of the requirements for making a timely election under § 42(b)(2)(A)(ii)(I). The Taxpayer represented that it was not using hindsight in requesting relief and that the Taxpayer had consistently taken the position with Agency that it made valid elections. However, we were not convinced that the Taxpayer was not using hindsight to elect a more favorable interest rate in f than the appropriate percentages for the months the buildings were placed in service. In

addition, we found the r-year delay in requesting relief for the late f elections to be untimely.

We concluded that in calculating the § 42 credits on the d buildings, the Taxpayer is required to use the n% appropriate percentages, which are the appropriate percentages for the months in which the buildings were placed in service. After the Taxpayer's representative was informed that relief to make late elections under § 301.9100-3 would not be granted, the Taxpayer withdrew its request for a ruling.

Please call Branch 5, CC:PSI, at if you have any questions on this memorandum.