

Year 2 =

Dear _____ :

This letter responds to a letter dated June 7, 2011, and subsequent correspondence, submitted on behalf of Taxpayer by its authorized representative, requesting an extension of time to make an election under § 42(f)(1) of the Internal Revenue Code pursuant to § 301.9100-3 of the Procedure and Administration Regulations. Taxpayer makes the following representations.

Building, a single building low-income housing project located in City, was placed in service on date b. On date d, Taxpayer received from Agency two Forms 8609, "Low-Income Housing Credit Allocation Certification," reflecting acquisition and rehabilitation credits allocated to Building by Agency in Year 1.

Taxpayer provided the two Forms 8609 relating to Building to its accountant, CPA, for purposes of completing Part II of the forms. Because Building was not eligible for credits in Year 1, the year Building was placed in service, Taxpayer intended to start the credit period for Building in Year 2, the year following the year Building was placed in service. However, CPA inadvertently checked the "No" box on line 10a of both Forms 8609 for Building, which caused the credit period for Building to begin in Year 1 rather than Year 2.

Under § 42(f) the term "credit period" means, with respect to any building, the period of 10 taxable years beginning with (A) the taxable year in which the building was placed in service, or (B) at the election of the taxpayer, the succeeding taxable year, but only if the building is a qualified low-income building as of the close of the first year of such period. Once made, the election is irrevocable.

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(f)(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 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(f)(1) for Building by filing within 120 days from the date of this letter amended Forms 8609 that includes the intended election. The amended Forms 8609 (along with a copy of this letter) are to be filed at the following address:

Department of the Treasury
Internal Revenue Service Center
Philadelphia, PA 19255-0549

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 Building otherwise qualifies for credit under § 42.

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.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: _____
CHRISTOPHER J. WILSON
Senior Counsel, Branch 5
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

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