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IRS LTR: Extension Granted to Elect Period for Low-Income Housing Credit.

The IRS granted a property owner an extension to elect when to start the credit period for its qualified low-income building.

Citations: LTR 201444013

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact: * * *, ID No. * * *
Telephone Number: * * *

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Refer Reply To: CC:PSI:B5 – PLR-108988-14

LEGEND:

Taxpayer = * * *
Address = * * *
BIN = * * *
Agency = * * *
Accounting Firm = * * *
Year 1 = * * *
Year 2 = * * *

Dear * * *:

This letter responds to a letter dated February 26, 2014, submitted on behalf of Taxpayer by Taxpayer's 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.

According to the information submitted, Taxpayer owns and operates a low-income housing building located at Address and identified by BIN. The building was placed in service in Year 1. In Year 2, Taxpayer received a Form 8609 for the building from the Agency, and provided the form to Accounting Firm to complete Part II of the form. Taxpayer intended to start the credit period for the building in Year 2, the year following the year the building was placed in service. However, Accounting Firm inadvertently checked the "No" box on line 10a of the Form 8609 for the building indicating that the credit period for the building was to begin in Year 1, the year the building was placed in service. Consistent with its intent, Taxpayer seeks an extension of time to make the election under § 42(f)(1) to start the credit period for the building in Year 2.

Section 42(f)(1) defines "credit period" to mean, with respect to any building, the period of 10 taxable years beginning with the taxable year in which the building is placed in service, or at the election of the taxpayer, the succeeding taxable year, but in either case only if the building is a qualified low-income building as of the close of the first year of such period. The election, once made, is irrevocable.

Section 301.9100-8(b) provides that the election under § 42(f)(1) generally must be made for the taxable year in which the building is placed in service, or the succeeding taxable year if the § 42(f)(1) election is made to defer the start of the credit period, and must be made in the certification required to be filed pursuant to § 42(l)(1) and (2). Section 301.9100-8(a)(4)(i) provides that the election under § 42(f)(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 provided in the instructions to the form.

Sections 301.9100-1(b) 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 (including affidavits described in § 301.9100-3(e)) 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, 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 § 42(f)(1) election on Form 8609 to treat the credit period for the building located at Address and identified by BIN, as beginning in Year 2. The election must be made by filing within 120 days from the date of this letter an amended Form 8609 that includes this intended election. The amended Form 8609 (along with a copy of this letter) is to be sent to 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 the building located at Address and identified by BIN 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

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