

**Internal Revenue Service**

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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:B06

PLR-145318-05

Date:

January 06, 2006

Re: Request for Extension of Time to Elect the Alternative Depreciation System for Certain Real Property

Taxpayer =

Location =

Year =

SB/SE Official =

Dear :

This letter responds to a letter submitted August 17, 2005, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations for Taxpayer to make an election under § 168(g)(7) of the Internal Revenue Code to use the Alternative Depreciation System (ADS) for certain real property.

According to the information submitted, Taxpayer is the developer and owner of a single building low-income rental housing project (the Property) located in Location. Construction was completed and the Property was placed in service in Year. At the time Taxpayer was formed as well as at all relevant times in the planning for the Property and the construction of the Property, it was intended that Taxpayer would elect to use the ADS rather than the modified accelerated cost recovery system (MACRS) to depreciate the Property. A tax opinion letter and financial projections were prepared for the Taxpayer based on using the ADS depreciation period. However, when the Year tax return was prepared, the MACRS depreciation period was inadvertently used. The return preparer did not realize the error at the time the Year return was filed. The Taxpayer relied on the return preparer, an individual with experience in the low income housing credit.

Taxpayer submitted the request for an extension of time under § 301.9100-3 on August 17, 2005.

## LAW AND ANALYSIS

Section 42(a) provides, in general, for the low income housing credit.

Section 168(g)(7), as amended by the Tax Reform Act of 1986, permits taxpayers to elect for any class of property for any taxable year to use the ADS method of depreciating the property. An election to use ADS shall be irrevocable.

Section 301.9100-7T(a) of the temporary Treasury regulations provides that, for elections under the Tax Reform Act of 1986, the election under § 168(g)(7) must be made for the taxable year in which the property is placed in service.

Section 301.9100-1(c) provides that the Commissioner may 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 301.9100-1(b) provides that the term "election" includes an application for relief in respect of tax.

Sections 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 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. A request for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

## CONCLUSIONS

Based solely on the facts and representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Taxpayer may make the election to use the ADS for the Property. A copy of this letter should be sent to the appropriate service center with a request that it be attached to Taxpayer's amended tax return for the taxable year following Year. A copy is enclosed for that purpose.

Except as specifically set forth above, we express no opinion concerning the federal income tax consequences of the facts described above under any other provisions of the Code.

We are sending a copy of this letter to the SB/SE Official.

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.

Sincerely,

Heather C. Maloy  
Associate Chief Counsel  
(Income Tax & Accounting)

Enclosures (2):  
copy of this letter  
copy for section 6110 purposes

cc: