

Internal Revenue Service

Number: **200340005**
Release Date: 10/3/2003
U.I.L.: 42.08-04

Department of the Treasury
Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:5-PLR-135689-02
Date:
September 19, 2002

LEGEND

Taxpayer =

State A =

Project =

City C =

Authority D =

Authority E =

Agreement F =

Agreement G =

Partner 1 =

Partner 2 =

Partner 3 =

Partner 4 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

o =

Dear _____,

This letter responds to your authorized representative's letter dated June 17, 2002, submitted on behalf of Taxpayer, requesting a ruling that redemption of the Project's tax-exempt financing at any time on or after the date on which the Project is placed in service for purposes of § 42 of the Internal Revenue Code will not preclude a determination that the Project was financed by tax-exempt bonds for purposes of § 42(h)(4)(B).

Taxpayer has provided the following representations:

FACTS:

Taxpayer, a State A limited partnership, was formed for the purpose of acquiring, constructing, owning, and operating a multi-family rental housing development, known as Project, located in City C and consisting of e affordable dwelling units. The general partners of Project are Partner 1 and Partner 2. The limited partners are Partner 3 and Partner 4.

Proceeds from the tax-exempt bonds representing 50 percent or more of the aggregate basis of Project, including the land on which it is located, will be expended on the Project costs on or before the date on which Project will be placed in service. Further, such expended amount will be equal to or exceed 50 percent of the aggregate basis of the Project as of the end of the first year of the credit period.

The Project costs include the following:

Land	\$ <u>a</u>
Construction Cost	<u>\$ <u>b</u></u>
Aggregate Basis	\$ <u>c</u>

The tax-exempt bonds will be redeemed on or after the date the Project will be placed in service for all purposes under § 42. Furthermore, all of the proceeds from the tax-exempt bonds will be expended on Project prior to redemption of the bonds. Project is expected to be placed in service on or before d. The Taxpayer will submit a final cost certification to the appropriate state housing credit agency on or before d and will elect the tax year ending d as the first year of the credit period.

The tax-exempt bonds were issued by Authority D, under the cap imposed by § 146 to the Project on f in the amount of \$ g. The proceeds from the tax-exempt bonds will be used to fund a construction loan bearing interest at h percent. A portion of the construction loan in the amount of \$ i will convert to a permanent loan bearing interest of j percent for a term of k years. Other Project financing includes a construction/permanent loan in the amount of \$ l bearing interest equal to the federal applicable rate for a term of k years from Authority E and a permanent loan in the amount of \$ m bearing interest of n percent for a term of k years from Authority D (the "Permanent Loan").

Agreement F requires that the proceeds of the bond issuance be used to make a mortgage loan for the purpose of financing the construction and land acquisition of Project. Furthermore, Agreement F requires the mandatory redemption, in part, in the amount necessary to reduce the principal amount of the bonds to \$ i or such lesser amount as necessary to satisfy the conditions set forth in Agreement G.

Pursuant to the terms of Agreement G, the Taxpayer shall use all capital provided by the limited partner to repay a portion of the bonds. To ensure compliance under Agreements F and G, the Taxpayer is compelled to redeem a portion of the bonds on or after the date Project will be placed in service for purposes of § 42. The Permanent Loan will be used to redeem a portion of the bonds.

Upon admission into the Taxpayer, Partner 3 and Partner 4 acquired an o percent interest in the Taxpayer, which among other things will provide Partner 3 and Partner 4 with a proportionate share of the low-income housing tax credits provided to Project under § 42.

DISCUSSION:

Section 42(a) provides a tax credit for investment in low-income housing buildings placed in service after December 31, 1986.

Section 42(h)(1)(A) provides that the amount of credit determined under § 42 for any taxable year with respect to any building shall not exceed the housing credit dollar amount allocated to such building under § 42(h).

Section 42(h)(1)(B) provides that an allocation generally shall be taken into account under § 42(h)(1)(A) only if it is made not later than the close of the calendar year in which the building is placed in service.

Section 42(h)(3)(A) provides that the aggregate housing credit dollar amount which a housing credit agency may allocate for any calendar year is the portion of the state housing credit ceiling allocated under § 42(h)(3) for such calendar year to such agency.

Section 42(h)(4)(A) provides that § 42(h)(1) does not apply to any portion of the credit otherwise allowable under § 42(a) which is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under § 103 if –

- (i) such obligation is taken into account under § 146, and
- (ii) principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing.

Section 42(h)(4)(B) provides that, if 50 percent or more of the aggregate basis of any building and the land on which the building is located is financed by a tax-exempt obligation described in § 42(h)(4)(A), § 42(h)(1) does not apply to any portion of the low-income housing credit allowable under § 42(a) with respect to such building.

In the present case, Taxpayer represents that the proceeds from the tax-exempt bonds constituting 50 percent or more of the aggregate basis of Project, including the land on which it is located will be expended on Project costs on or before the date on which Project will be placed in service. Furthermore, such expended amount from the proceeds of the tax-exempt bonds will be equal to or exceed 50 percent of the aggregate basis of the Project as of the end of the first year of the tax credit period.

Accordingly, based solely on the representations and relevant law as set forth above, we conclude that the redemption of the tax-exempt bonds at any time on or after the date on which Project is placed in service for purposes of § 42 will not preclude a determination that Project was financed with tax-exempt bonds under § 42(h)(4)(B).

No opinion is expressed or implied regarding the application of any other provisions of the Code or regulations, including §§ 103 and 141-150. Specifically, we express no opinion on whether the Project qualifies for the low-income housing tax credit under § 42, the validity of costs included in the Project's basis, whether and when the "50-percent aggregate basis" requirement in § 42(h)(4)(B) is met, or whether any other requirement of § 42(h)(4) is met.

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

In accordance with the power of attorney on file, a copy of this letter is being sent to Taxpayer's authorized legal representative.

Sincerely,
Harold Burghart
Senior Adviser
Branch 5
(Passthroughs and Special Industries)

Enclosure:
Copy of letter
Copy for 6110 purposes