

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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Person To Contact: \_\_\_\_\_, ID No. \_\_\_\_\_

Telephone Number:

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Date:  
March 28, 2007

## LEGEND

Taxpayer =

Project =

City 1 =

City 2 =

State =

Seller =

a =b =

Year 1 =

Year 2 =

c =

d =

e =

f =

Dear :

This letter responds to Taxpayer's letter dated December 26, 2006, and subsequent correspondence from Taxpayer's authorized representative, requesting a ruling that will waive for Project buildings the 10-year holding period for existing buildings under § 42(d)(2)(B)(ii) of the Internal Revenue Code, pursuant to the authority for the acquisition of certain federally-assisted buildings provided in § 42(d)(6)(A). The Internal Revenue Service Office that will have examination jurisdiction over Taxpayer is located in City 1.

The relevant facts as represented by Taxpayer in these submissions are set forth below.

## **FACTS**

Taxpayer is a State limited partnership formed to acquire, rehabilitate, develop, own and operate Project. Project consists of b units in f buildings located in City 2. The street address of each of the b units is provided in Attachment A, and is incorporated by reference into this ruling. On a, Taxpayer entered into a binding contract to purchase Project. Taxpayer intends to use bond proceeds to rehabilitate Project buildings and qualify Project buildings for both the acquisition and rehabilitation credit under § 42 of the Code.

Project was originally purchased and placed in service by Seller in Year 1. In Year 2, as a result of a tender and merger of limited partnership interests in Seller, there was a 100-percent change of ownership in Seller, thus resulting in a new placed in service date for Project for federal income tax purposes.

The current mortgage loan on Project as of c, in the amount of \$d, is insured by the Department of Housing and Urban Development (HUD). Project also receives

substantial federal assistance under Section 8 of the United States Housing Act of 1937. In a letter dated e, HUD (1) stated that Project is a federally assisted Project, (2) identified the source of Project's federal financing, (3) stated that it believes a waiver of the 10-year holding requirement under § 42 is necessary to avert Federal mortgage funds being at risk, and (4) designated Project as a troubled Project.

Taxpayer makes the following representations concerning Project:

- 1) Taxpayer's acquisition of Project buildings will be by purchase within the meaning §179(d)(2), as applicable under § 42(d)(2)(D)(iii)(I);
- 2) To the best of Taxpayer's knowledge, there have been no nonqualified substantial improvements to Project buildings since they were last placed in service;
- 3) As of the date of Taxpayer's application, Project buildings are federally assisted buildings as defined in § 42(d)(6)(B) and § 1.42-2(c)(1) of the Income Tax Regulations;
- 4) Project buildings were not previously placed in service by Taxpayer, or by a person who was a related person (as defined in § 42(d)(2)(D)(iii)(II)) to Taxpayer at the time Project buildings were last placed in service;
- 5) To the best of Taxpayer's knowledge no prior owner of Project buildings were allowed a § 42 low-income housing tax credit; and
- 6) To the best of Taxpayer's knowledge, federal mortgage funds for Project buildings are at risk within the meaning of § 1.42-2(c)(2).

## **RULING REQUESTED**

Taxpayer requests the Service to waive, for Project buildings, the 10-year holding period requirement of § 42(d)(2)(B)(ii) under the authority of the exception provided in § 42(d)(6)(A)(ii) and § 1.42-2.

## **LAW AND ANALYSIS**

Section 38(a) provides for a general business credit against tax that includes the amount of the current year business credit. Section 38(b)(5) provides that the amount of the current year business credit includes the low-income housing credit determined under § 42(a).

For an existing building to qualify for the 30-percent present value housing tax credit, § 42(d)(2)(B)(ii) requires there be a period of at least 10 years between the date

of the building's acquisition by the taxpayer and the later of:

- (1) The date the building was last placed in service, or
- (2) The date of the most recent nonqualified substantial improvement of the building.

Section 42(d)(6)(A) provides an exception to the 10-year holding period requirement of § 42(d)(2)(B)(ii). It states that a waiver may be granted for a federally-assisted building if the Secretary determines that the waiver is necessary –

(i) to avert an assignment of the mortgage secured by property in the project (of which such building is a part) to the Department of Housing and Urban Development or the Farmers Home Administration (now Rural Housing Service, USDA-RHS), or

(ii) to avert a claim against a Federal mortgage insurance fund (or such Department or Administration) with respect to a mortgage which is so secured.

Section 42(d)(6)(B) defines the term "federally-assisted building" as any building that is substantially assisted, financed, or operated under (i) section 8 of the United States Housing Act of 1937, (ii) section 221(d)(3) or 236 of the National Housing Act, or (iii) section 515 of the Housing Act of 1949, as such Acts are in effect on the date of enactment of the Tax Reform Act of 1986 (October 22, 1986).

Section 1.42-2 contains requirements that must be satisfied before the Secretary will grant the waiver referred to in § 42(d)(6). Taxpayer's representations, including a written representation dated from HUD, indicate that these requirements have been satisfied.

Based solely upon the above facts, Taxpayer's representations, and the representations from HUD, we have determined that Project buildings are federally-assisted within the meaning of § 42(d)(6)(B)(i), and that federal funds are at risk under § 42(d)(6)(A) and § 1.42-2(c)(2). Therefore, we rule as follows:

The 10-year holding period requirement of section 42(d)(2)(B)(ii) is waived for Taxpayer's acquisition of Project buildings.

No opinion is expressed or implied regarding the application of any other provision in the Code or regulations. Specifically, no opinion is expressed or implied regarding whether Taxpayer's costs of acquisition and rehabilitation of Project buildings will otherwise qualify for the low-income housing credit under § 42.

This ruling is directed only to the Taxpayer which requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this letter should be

filed with the federal income tax return for Taxpayer and its partners for the first taxable year in which the low-income housing credit for Project buildings are claimed.

Sincerely yours,

Susan Reaman  
Chief, Branch 5  
Office of Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosure:  
6110 copy

cc :

ATTACHMENT A

Unit

Address

***BUILDING NUMBER***

PLR-101200-07

7

Unit

Address

**BUILDING NUMBER**

PLR-101200-07

8

Unit

Address

***BUILDING NUMBER***



PLR-101200-07

9

Unit

**Address**

***BUILDING NUMBER***