

Internal Revenue Service

Department of the Treasury

Number: **200147010**
Release Date: 11/23/2001
Index No.: 42.08-04

Person to Contact; Badge Number:

Telephone Number:
PLR-113141-01/CC:PSI:B5
Refer Reply To:

Date: July 09, 2001

Legend

Taxpayer =

State A =

City B =

Project C =

Agency D =

Program E =

Organization F =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

Dear :

This letter responds to your authorized representative's letter of February 28, 2001, and subsequently submitted correspondence. Taxpayer is requesting a private letter ruling that the redemption of the tax-exempt bonds at any time on or after the date on which Project C is placed in service for purposes of § 42 of the Internal Revenue Code will not preclude a determination that the Project was financed with the proceeds

of tax-exempt bonds under § 42(h)(4)(B), provided the requirements of § 42(h)(4) are otherwise satisfied. Taxpayer has made the following representations.

FACTS:

The Taxpayer, a State A limited partnership, was formed for the purpose of acquiring, rehabilitating, owning, and operating a multi-family rental housing development located in City B. The project is known as Project C, and it contains a low-income dwelling units.

On b, Agency D issued tax-exempt bonds in the amount of c with an interest rate of d percent. The proceeds of the bonds will be used to finance a mortgage loan which will pay for a portion of the construction costs of Project C. Project C is expected to be placed in service on e. Project C's aggregate basis is expected to be f.

The bonds will be repaid primarily from permanent financing provided by Program E in the approximate amount of g with an interest rate of h percent. In addition, Organization F has provided three separate loans in the approximate amounts of i, j, and k, all bearing an interest rate of m percent.

Fifty percent or more of the aggregate basis of each building in Project C and the land on which each building is located will be financed by the tax-exempt bonds, measured at the end of the first year of the building's credit period. The tax-exempt bonds will be redeemed on or after the date Project C is placed in service. Further, all of the tax-exempt bond proceeds will be expended on Project C by the placed-in-service date.

LAW AND ANALYSIS

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)(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 on the proceeds of which were used to provide such financing.

For purposes of § 42(h)(4)(A), § 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 with such tax-exempt obligations, § 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, the Taxpayer represents that 50 percent or more of the aggregate basis of each building in Project C and the land on which each building is located will be financed by tax-exempt bonds, measured at the end of the first year of the building's credit period. The tax-exempt bonds will be redeemed on or after the date Project C is placed-in-service. Further, all of the tax exempt bond proceeds will be expended on Project C by the placed-in-service date.

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 when Project C is placed in service under § 42 will not, in and of itself, result in a determination that Project C was not financed with tax-exempt bonds under § 42(h)(4)(B).

No opinion is expressed or implied regarding the application of any other provision of the Code or Income Tax Regulations. Specifically, we express no opinion on whether Project C qualifies for the low-income housing tax credit under § 42, the validity of costs included in the Project's eligible basis, or whether the "50-percent aggregate basis" requirement in § 42(h)(4)(B) is met.

Under the power of attorney on file, we are sending a copy of this letter ruling to your authorized representatives.

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.

Sincerely,
Harold E. Burghart
Assistant to the Chief, Branch 5
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

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