

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date: December 21, 2004

LEGEND

Taxpayer =

City A =

Project =

State 1 =

City B =

General =

Partner =

Corporation =

State 2 =

Seller =

A =

b =

c =

f =

g =

h =

i =

j =

k =

Dear :

This letter responds to Taxpayer's letter dated November 22, 2004, 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)(C). The Internal Revenue Service Office that will have examination jurisdiction over Taxpayer is located in City A.

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

FACTS

Taxpayer is a State 1 limited partnership organized to purchase, rehabilitate, and operate Project, a b-unit multi-building low-income housing apartment complex for families located in City B.

The Taxpayer's general partner is General Partner, a State1 corporation. General Partner is wholly owned by Corporation, a State 2 nonprofit corporation. General Partner was organized to foster the development of low-income housing, among other purposes. General Partner is exempt from federal income tax under § 501(a) and described in § 501(c)(3). General Partner will act as the developer and sponsor of Project.

Taxpayer intends to finance a portion of the acquisition and rehabilitation of Project with tax-exempt bonds subject to the bond volume cap under § 146 and claim low-income housing credits pursuant to § 42. Upon securing the bond issuance and allocation of low-income housing credits, Taxpayer will acquire and rehabilitate Project in conformance with § 42(d)(2)(B)(iv) and § 42(e).

Project is currently owned by Seller, a State 1 limited partnership, which acquired Project on c. On a, General Partner entered into a purchase agreement to acquire

Project from Seller. On f, General Partner assigned all of its interest in the purchase agreement to Taxpayer. The purchase price for Project is \$g, subject to certain adjustments at the time of closing. The outstanding balance owed under the existing mortgage note as of h, was approximately \$i. It is anticipated that the acquisition of Project will close in escrow on or prior to j, subject to the receipt of (i) a favorable ruling from the Internal Revenue Service granting the waiver requested herein and (ii) certain other regulatory approvals.

Project has not been owned by Seller during the entire 10-year period ending on the expected acquisition date. Project buildings were last placed in service by Seller on c. Project is financed with a mortgage assisted under § 236 of the National Housing Act and 25 percent of the residents in Project receive Section 8 assistance under the Rent Supplement Program.

The current mortgage on Project is eligible for prepayment under Subtitle B of the Emergency Low Income Housing Preservation Act of 1987 (ELIHPA) at any time provided the owner gives the mortgagee and the U.S. Department of Housing and Urban Development (HUD) the required statutory authority notice. In conjunction with and conditioned upon the proposed sale, Seller has agreed to waive its unconditional right to prepay the mortgage on Project and such waiver will be binding on all successors of Seller.

Taxpayer has received a letter from HUD certifying that it is reasonable to expect that, if the Service does not grant the 10-year waiver requested by Taxpayer, Project will cease complying with its low-income occupancy requirements.

Taxpayer estimates that rehabilitation expenditures in the amount of approximately \$k will be incurred on Project. Upon placing Project in service, Taxpayer intends to own and operate Project in compliance with all applicable requirements under § 42, including occupancy and rent restrictions.

Since the interval between the date Project was last placed in service on c and the expected date of acquisition, j, is less than 10 years, Taxpayer has failed to meet the 10-year holding period requirement of § 42(d)(2)(B)(ii) for the existing buildings in Project. Accordingly, Taxpayer has submitted this request for a waiver of the holding period requirement under the authority of the exception granted by § 42(d)(6)(C).

Taxpayer makes the following additional representations and certifications concerning Project:

- 1) Taxpayer's acquisition of Project will be by purchase as defined in §179(d)(2) and as modified by § 42(d)(2)(D)(iii)(I);

- 2) Taxpayer will acquire Project to provide affordable housing to qualified low-income households.

3) None of the buildings in Project were previously placed in service by Taxpayer, or by a person who was a related person (as defined in section 42(d)(2)(D)(iii)(II)) to Taxpayer at the time the buildings were last placed in service;

4) 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;

5) There have been no nonqualified substantial improvements to Project buildings since Project buildings were last placed in service on 6;

6) To the best of Taxpayer's or Taxpayer's representatives' knowledge, no prior owner of Project was allowed a § 42 low-income housing credit for Project;

7) Taxpayer has complied with the requirements of § 1.42-2 to the extent that such requirements apply to a request for a waiver of the 10-year holding period requirement under § 42(d)(6)(C); and

8) All terms and conditions of § 42 and related sections, including minimum substantial rehabilitation as provided by § 42(e)(3), will be met except for the 10-year holding requirement of § 42(d)(2)(B)(ii). Taxpayer asks that this requirement be waived pursuant to authority granted under § 42(d)(6)(C).

RULING REQUESTED

Taxpayer requests the Service to waive, for Project buildings, the 10-year holding period requirement of § 42(d)(2)(B)(ii) pursuant to § 42(d)(6)(C).

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 low-income housing 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:

(I) The date the building was last placed in service, or

(II) 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 provides 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 HUD 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)(C) provides that a waiver may be granted under § 42(d)(6)(A) (without regard to clauses (i) and (ii)) for a federally-assisted building described in § 42(d)(6)(B)(ii) or (iii) if:

(i) the mortgage on such building is eligible for prepayment under subtitle B of ELIHPA or under section 502(c) of the Housing Act of 1949 at any time within 1 year after the date of application for such a waiver,

(ii) the appropriate Federal official certifies to the Secretary that it is reasonable to expect that, if the waiver is not granted, such building will cease complying with its low-income occupancy requirements, and

(iii) the eligibility to prepay such mortgage without the approval of the appropriate Federal official is waived by all persons who are so eligible and such waiver is binding on all successors of such persons.

Under § 42(d)(6)(B)(ii) and (iii) a "federally-assisted building" is any building that is substantially assisted, financed, or operated under section 221(d)(3) or 236 of the National Housing Act, or under section 515 of the Housing Act of 1949, as such Acts were 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 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)(ii), the mortgage loan on Project buildings is eligible for prepayment under subtitle B of ELIHPA, the appropriate Federal official has certified that absent the requested waiver it is reasonable to expect that if the waiver is not granted the Project buildings will cease to comply with its low-income occupancy requirements, and the ability to prepay the mortgage without HUD's consent

will be waived and the waiver will be binding on Taxpayer and all successors of Taxpayer. 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 pursuant to § 42(d)(6)(C).

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 the building(s) in the project is/are claimed.

In accordance with the power of attorney on file with the ruling request, this letter is being sent to Taxpayer's authorized representatives.

Sincerely yours,

/s/ Harold E. Burghart

Harold E. Burghart
Senior Advisor, Branch 5
Office of Associate
Chief Counsel
(Passthroughs and Special
Industries)

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

cc: