

PROPERTY COMPLIANCE REPORT

A MONTHLY PUBLICATION ON LOW-INCOME HOUSING TAX CREDIT COMPLIANCE

October 2003, Volume VI, Issue X, Published By Novogradac & Company LLP

PLR 200339022 - Partial Guidance on Full-Time Student Rule

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In the November 2000 issue of the *Property Compliance Report*, we discussed the full-time student rule and the exceptions found in Internal Revenue Code (IRC) §42(i)(3)(D). There has been very little guidance from the Internal Revenue Service (IRS) since then regarding this rule. However, the IRS recently offered further guidance in Private Letter Ruling (PLR) 200339022. The ruling is significant because the full-time student in the ruling did not conform to the exceptions in IRC §42(i)(3)(D), but still qualified as a low-income tenant. The significant facts and circumstances in PLR 200339022 include the following:

- ♦ The tenant is 50 years old;
- ♦ The tenant is not a dependent on another person's federal income tax return in accordance with IRC §152;
- ♦ The tenant was pursuing a law degree at a university on a full-time basis;
- ♦ The tenant is single;
- ♦ The tenant has no children; and
- ♦ The tenant does not fall under any of the student exceptions provided under IRC §42(i)(3)(D).

Full-time Student Exceptions

The purpose of the full-time student rule is to disallow credits being received for units that are occupied entirely by full-time students. In other words, if just one tenant in the unit is not a full-time student (even a part-time student is acceptable) then the unit is qualified. The IRS did not want IRC §42 to finance student college housing such as dormitories, fraternities and sororities. In the General Explanation of the Tax Reform Act of 1986 it states that no dormitory may be a qualified low-income building. The General Explanation also states that "in no case is a unit considered to be occupied by a low-income individuals if all of the occupants of such unit are students (as determined under §151(c)(4)), no one of whom is entitled to file a joint income tax return." However, the IRS also did not want to discourage tenants in low-income housing from attending school. Therefore, the IRS has exceptions to the rule in IRC §42(i)(3)(D) as follows:

- (D) Certain students not to disqualify unit. A unit shall not fail to be treated as a low-income unit merely because it is occupied -
- (i) by an individual who is -
 - (I) a student and receiving assistance under title IV of the Social Security Act, or
 - (II) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar federal, state, or local laws, or
 - (ii) entirely by full-time students if such students are -
 - (I) single parents and their children and such parents and children are not dependents (as defined in section 152) of another individual, or
 - (II) married and file a joint return.

In addition, the National Council of State Housing Agencies (NCSHA) has indicated in its "Recommended Practices for Compliance Monitoring" that children enrolled in kindergarten through 12th grade should not be considered full-time students.

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The facts and circumstances in PLR 200339022 do not satisfy any of the exceptions listed above for the full-time student rule; and the tenant would appear to be disqualified, were it not for the new guidance in PLR 200339022. Although the tenant in the PLR does not technically meet the exceptions listed above, keep in mind that the tenant in this PLR does not seem like the typical college student in dormitories, fraternities and sororities that the IRS considers disqualified. Most students in college are less than 24 years old. In addition, most students are claimed as dependents on another person's tax return because the IRS generally allows persons that are full-time students who are less than 24 years old to be claimed as dependents on their parents' tax return in accordance with IRC §152. Therefore, it appears the IRS concluded that the tenant in the PLR was qualified since this tenant was not the typical college student due to the tenant's age and tax return dependent status. The other facts about this tenant, such as being single with no children, do not seem to distinguish the tenant from the typical college student and are probably not important facts in the PLR with regards to qualifying the tenant.

Since the IRS did not provide any absolute guidance on what age is adequate to distinguish a tenant from the typical college student, we cannot conclude if age 50 is adequate or some other age is adequate for satisfying the IRS intent with the full-time student rule. The IRS also did not provide any absolute guidance on tax return dependent status. However, one of the exceptions under IRC §42(i)(3)(D) lists dependent status as a requirement, and it was also one of the facts in the PLR, so it seems like it might be a requirement to not be claimed as a dependent on another person's tax return in order to qualify a unit in certain circumstances.

Note that IRC §42(i)(3)(D) has addressed single parents with children and married tenants without children in the exceptions listed above, and now the IRS has addressed an exception for single tenants with no children in this PLR, but there still is no guidance on any exceptions for married tenants with children. There are many other issues with the full-time student rule that need to be addressed by the IRS, such as the definition of single parent (is it divorced or is it separated), the definition of married (is it married to tenants in the unit or could it be outside of the unit), and whether K-12 will not be considered full-time students.

Definition of Full-Time Student

IRC §151(c)(4) defines a student as: "an individual who during each of five calendar months during the calendar year in which the taxable year of the taxpayer begins -

- (A) is a full-time student at an educational organization described in section 170(b)(1)(A)(ii); or
- (B) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in section 170(b)(1)(A)(ii) or of a state or political subdivision of a state."

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ISSN 1536-6863

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Definition of Educational Organization

IRC §170(b)(1)(A)(ii) defines an educational organization as: "an educational organization [that] normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on."

Treasury Regulation Section 1.151-3 provides further guidance:

(b) Student. For purposes of section 151(e) and section 152(d), and the regulations thereunder, the term "student" means an individual who during each of [five] calendar months during the calendar year in which the taxable year of the taxpayer begins is a full-time student at an educational institution or is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state.

An example of "institutional on-farm training" is that authorized by 38 U.S.C. 1652 (formerly section 252 of the Veterans' Readjustment Assistance Act of 1952), as described in section 252 of such act. A full-time student is one who is enrolled for some part of five calendar months for the number of hours or courses [that] is considered to be full-time attendance. The five calendar months need not be consecutive. School attendance exclusively at night does not constitute full-time attendance. However, full-time attendance at an educational institution may include some attendance at night in connection with a full-time course of study.

(c) Educational institution. For purposes of sections 151(e) and 152, and the regulations thereunder, the term "educational institution" means a school maintaining a regular faculty and established curriculum, and having an organized body of students in attendance. It includes primary and secondary schools, colleges, universities, normal schools, technical schools, mechanical schools, and similar institutions, but does not include non-educational institutions, on-the-job training, correspondence schools, night schools and so forth.

IRS Publication 17 provides guidance on vocational high school students as follows. People who work on "co-op" jobs in private industry as part of a school's prescribed course of classroom and practical training are considered full-time students. Prospective tenants are not full-time students while attending school only at night. However, IRS Publication 17 also states, "full-time attendance at a school can include some attendance at night as part of a full-time course of study."

Summary

In summary, the IRS has outlined specific exceptions for qualifying full-time students as low-income housing residents. Although many atypical full-time students may not be eligible under the specific exceptions in IRC §42(i)(3)(D), some atypical situations exist, such as the case in PLR 200339022, where the full-time student may qualify as a low-income tenant.

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It is important to note that a PLR is directed only to the taxpayer who requested it and may not be used or cited as precedent. Therefore, PLR 200339022 should be analyzed within the context of a particular fact set. If a taxpayer obtains a PLR from the IRS, it is generally binding on the IRS with regards to that taxpayer only, subject to certain conditions and limitations, such as the veracity of the facts represented to the IRS. ❖

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