

Private Letter Ruling 200006020 - IRC Section 42

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Internal Revenue Service
Department of the Treasury
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

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LEGEND: =

Taxpayer =

State =

City =

Project =

Corp 1 =

Corp 2 =

LP1 =

LP2 =

Agency =

State Law =

Program =

Department =

Agreement =

Release =

b =

c =

d =

Dear

This letter responds to a letter dated b, requesting a ruling on behalf of Taxpayer under §42(h)(4)(B) of the Internal Revenue Code, regarding the proposed redemption of tax-exempt bonds issued for the Project.

FACTS:

Taxpayer, a State limited liability company, was formed for the purpose of acquiring, constructing, owning, and operating a Project consisting of c dwelling units in City. The current members of Taxpayer are Corp 1, Corp 2, LP1, and LP2. A portion of the development costs for the Project will be financed by tax-exempt bonds, which were issued by Agency under the volume cap imposed by 4146. The bond resolution requires that the proceeds of the bond issuance be used to make a mortgage loan for the purpose of financing the construction of the Project.

Under local law, an additional incentive exists for the development of housing projects qualifying for § 42 tax credits. Real property tax relief is made available under State Law and the Program. The form of property tax relief used for the Project is the issuance by the Department of non-interest bearing Certificates, which may be sold to owners of other real property who may use them to secure property tax relief on their properties. Under the terms of a Program Agreement entered into on d, between the Department and Taxpayer, the Certificates are issuable upon the issuance by the Department of a Release, which the Department is required to issue upon its receipt of a certificate of occupancy and its determination that the Project's rehabilitation is completed in accordance with certain standards and regulatory requirements. One of the regulatory requirements for the issuance of the Certificates is that the Project be debt-free. This requirement has been incorporated into the Program Agreement between the Department and Taxpayer. Accordingly, pursuant to the requirements of the Program, the sale of the Certificates will require an immediate application of the proceeds thereof to redeem the bonds.

Tax-exempt bond proceeds representing 50 percent or more of the aggregate basis of the Project building and the land on which the Project is located will be spent on or before the date on which the Project is placed in service.

The tax-exempt bonds will be redeemed on or after the date that the Project is placed in service for all purposes under § 42.

RULING REQUESTED:

Provided the requirements of § 42(h)(4) are otherwise satisfied with respect to the Project, the redemption of the tax-exempt bonds at any time on or after the date on which the Project is placed in service for all purposes under § 42 will not, in and of itself, permit a determination that the Project was not financed with the tax-exempt bonds under § 42(h)(4)(B).

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)(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 obligations 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 with such tax-exempt obligations 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, the Taxpayer represents that tax-exempt bond proceeds representing 50 percent or more of the aggregate basis of the Project building and the land on which the Project is located will be spent on or before the date on which the Project is placed in service. Taxpayer further represents that the tax-exempt bonds will be redeemed on or after the date that the Project is placed in service for all purposes under § 42.

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 the Project is placed in service for all purposes under § 42 will not, in and of itself, result in a determination that the Project was not financed with the 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 the Project qualifies for the low-income housing tax credit under § 42 nor the validity of the Project's costs included in eligible basis. Further, we express no opinion on whether the Project is a qualified low-income housing project.

In accordance with the power of attorney filed with the ruling request, we are sending a copy of the letter ruling to Taxpayer's authorized representatives.

This letter 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 yours,

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