

PLR 200109011 - IRC Section 42 - Low-income housing credit

IRC Section 42

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Date: November 22, 2000

Number: 200109011

Release Date: 3/2/2001

Index Number: 42.08-04

Person to Contact:

Telephone Number:

Refer Reply To: CC:PSI:5-PLR-114303-00

Legend:

Partnership =

State =

A =

City B =

Agency C =

City D =

a =

b =

c =

d =

e =

f =

g =

Dear

This letter responds to Partnership's authorized representative's letter dated July 20, 2000, and subsequent correspondence, submitted on behalf of Partnership, requesting a private letter ruling concerning the low-income housing tax credit under section 42 of the Internal Revenue Code. Specifically, we are asked to rule that for purposes of section 42(h)(4)(B), Partnership may include as part of the proceeds of tax-exempt bonds subject to the volume cap under section 146 the investment proceeds from the investment of the sale proceeds of such bonds that accrue during the project period (net of rebate amounts attributable to the project period). Partnership has made the following representations:

#### FACTS:

Partnership is a State A limited partnership which was formed to develop and operate a low-income housing project (the "Project") in City B. Partnership is a calendar year, accrual basis taxpayer. The Internal Revenue Service Office that will have examination jurisdiction over Partnership's tax return is in City D. In a, Agency C issued tax-exempt housing bonds (the "Bonds") which are subject to the volume cap imposed by section 146 to finance the debt portion of the Project. The original face amount of the Bonds was  $S_b$ , issued at par.

Originally, Partnership's budget for the Project, as approved by Agency C in connection with the issuance of the Bonds, showed an estimated aggregate basis of  $S_c$  for the buildings and the land making up the Project, to be primarily financed by the Bonds. The face amount of the Bonds constituted approximately  $d$  percent of the aggregate basis of  $S_c$  for the buildings and the land making up the Project.

However, Partnership has revised its earlier estimate of projected aggregate basis for the buildings and the land making up the Project from  $S_c$  to  $S_e$ . This increase is mainly due to the following initially unanticipated factors:

(1) a sharp increase in drywall prices; (2) fencing found necessary to protect against vandalism that occurred during construction; (3) using hard pipe conduit (not typically required) to comply with requests by City B and the county in which City B is located; and (4) post-bond issuance increases in local impact fees. Accordingly, the face amount of the Bonds is now expected to constitute less than 50 percent of the aggregate basis of  $S_e$  of the buildings and land making up the Project.

Partnership expects to place the Project in service by the end of  $f$ . Partnership estimates that there will be approximately  $\$g$  in investment earnings from the temporary investment

of the sale proceeds of the Bonds that accrue through the date the Project is placed in service (net of any arbitrage rebate under section 148).

Partnership represents that utilization of investment proceeds earned to the placed-in-service date of the Project will allow the Project to satisfy the 50 percent test of section 42(h)(4)(B).

## DISCUSSION

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 section 42 for any taxable year with respect to any building shall not exceed the housing credit dollar amount allocated to such building under section 42(h). Section 42(h)(1)(B) provides that an allocation generally shall be taken into account under section 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 section 42(h)(3)(A) for such calendar year to such agency. Section 42(h)(4)(A) provides that section 42(h)(1) does not apply to any portion of the credit otherwise allowable under section 42(a) which is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under section 103 if -

(i) such obligation is taken into account under section 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.

For purposes of section 42(h)(4)(A), 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, section 42(h)(1) does not apply to any portion of the low-income housing credit allowable under section 42(a) with respect to such building.

Section 1.42-IT(f)(1) of the Temporary Income Tax Regulations provides that no housing credit allocation is required in order to claim a credit under section 42 with respect to the entire qualified basis (as defined in section 42(c)) of a qualified low-income building if 50 percent or more of the aggregate basis of the building and land on which the building is located is financed with the proceeds of tax-exempt bonds which are taken into account for purposes of the volume cap under section 146.

Section 1.141-1 (b) of the Income Tax Regulations defines "proceeds" for purposes of section 141 as the sale proceeds of an issue (other than those sale proceeds used to retire bonds on the issue that are not deposited in a reasonably required reserve or replacement

fund). For this purpose, proceeds also include any investment proceeds from investments that accrue during the project period (net of rebate amounts attributable to the project period). Section 1.141-1 (b) defines "project period" as the period beginning on the issue date and ending on the date that the project is placed in service.

Section 1.148-1 (b) defines "sale proceeds" as any amounts actually or constructively received from the sale of the issue, including amounts used to pay underwriters' discount or compensation and accrued interest other than pre-issuance accrued interest.

Section 1.148-1 (b) defines "investment proceeds" as any amounts actually or constructively received from investing proceeds of an issue.

Based on the relevant law as set forth above, the term "proceeds" in section 1.42-IT(f)(1) includes any investment proceeds from investment of the sale proceeds that accrue during the project period (net of rebate amounts attributable to the project period). In the present case, Partnership represents that there will be approximately \$g in investment earnings from the temporary investment of the sale proceeds of the Bonds that accrue through the date the Project is placed in service (net of any arbitrage rebate under section 148). Accordingly, for purposes of section 42(h)(4)(B), we conclude that investment proceeds from the investment of the sale proceeds of the Bonds that accrue during the project period (net of rebate amounts attributable to the project period) may be included as part of Partnership's proceeds of the Bonds.

No opinion is expressed or implied regarding the application of any other provisions of the Code or regulations, including section 103, and sections 141-150. Specifically, we express no opinion on whether the Project qualifies for the low-income housing tax credit under section 42, the validity of costs included in the Project's basis, whether and when the 50-percent aggregate basis requirement in section 42(h)(4)(B) is met, or whether any other requirement of section 42(h)(4) is met.

In accordance with the power of attorney filed with this request, we are sending a copy of this letter ruling to Partnership's first authorized representative.

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 Branch Chief,

Branch 5

Office of Assistant Chief Counsel

(Passthroughs and Special Industries)

Enclosure: