

Internal Revenue Service

Department of the Treasury

Number: **200147009**
Release Date: 11/23/2001
Index No.: 42.08-04

Person to Contact; Badge Number:

Telephone Number:

Refer Reply To:
PLR-113138-01/CC:PSI:B5
Date: July 09, 2001

Legend

Taxpayer =

Project A =

State B =

City C =

Agency D =

Agency E =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

Dear :

This letter responds to your letter of February 28, 2001, and subsequently submitted correspondence. Taxpayer is requesting a ruling that the redemption of tax-exempt bonds at any time on or after the date on which Project A is placed in service for purposes of § 42 of the Internal Revenue Code will not preclude a determination that Project A was financed with the proceeds of tax-exempt bonds under § 42(h)(4)(B). Taxpayer has made the following representations.

FACTS

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

On b, Agency D issued tax-exempt bonds in the amount of c, bearing an interest rate at a maximum rate of d percent. The bonds were issued to finance a mortgage loan to pay for a portion of the costs of rehabilitating Project A, whose aggregate basis will be e. Project A is expected to be placed in service by f.

The bonds will be repaid primarily from the proceeds of permanent financing provided by Agency D in the approximate amount of g with an interest rate of h percent and Agency E in the approximate amount of i with an interest rate of j percent.

Fifty percent or more of the aggregate basis of each building in Project A and the land on which each 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 A is placed in service. Further, all of the tax-exempt bond proceeds will be expended on Project A 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)(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)(A) 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 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 A 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 A is placed in service. Further, all of the tax-exempt bond proceeds will be expended on Project A 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 A is placed in service under § 42 will not, in and of itself, result in a determination that Project A was not financed with tax-exempt bonds under § 42(h)(4)(B).

No opinion is expressed or implied regarding the application of any other provisions of the Code or Income Tax Regulations. Specifically, we express no opinion on whether Project A 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 the Taxpayer's 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