

Internal Revenue Service
Department of the Treasury
Washington, DC 20224

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LEGEND:

Taxpayer =
Project =
State =
Place =
Issuer =
d =

Dear [redacted data]:

This letter responds to a letter dated December 20, 2002, submitted on behalf of Taxpayer, requesting a private letter ruling regarding § 42 of the Internal Revenue Code.

Taxpayer represents the following facts:

Taxpayer is a State limited partnership. Taxpayer was formed to develop, construct, own, and operate the Project located in Place. Taxpayer expects the Project will be placed in service in d. Construction financing includes tax-exempt bonds issued by Issuer. Issuer will lend the proceeds of the bonds to Taxpayer ("Bond Loan"). These tax-exempt bonds will finance 50 percent or more of the aggregate basis of each building in the Project and the land on which each building is located. The tax-exempt bonds are exempt from tax under § 103 and are subject to the volume cap under § 146. After the Project is placed in service under § 42, Taxpayer will repay a portion of the Bond Loan, and Issuer will redeem a portion of the tax-exempt bonds.

Taxpayer will claim only the 30 percent present value credit allowable under § 42(b)(2)(B)(ii) with respect to the Project. Taxpayer will not claim any 70 percent present value credit as described in § 42(b)(2)(B)(i) with respect to the Project.

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)(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 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 by 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, Taxpayer represents that 50 percent or more of the aggregate basis of each building in the Project and the land on which each building is located will be financed by tax-exempt bonds. Also, a portion of the tax-exempt bonds will be redeemed after the date the Project is placed in service.

Accordingly, based solely on the representations and the relevant law set forth above, we conclude that the redemption of a portion of the tax-exempt bonds at any time after the date when the Project is placed in service under § 42 will not, in and of itself, result in a determination that the Project 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 the Project qualifies for the low-income housing tax credit under § 42, the validity of costs included in the Project's eligible basis, whether or when the "50-percent aggregate basis" requirement in §42(h)(4)(B) is met, or whether any other requirement of § 42 is met.

According to the power of attorney on file with the ruling request, a copy of this letter is being sent to Taxpayer's authorized representative.

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
Senior Advisor, Branch 5
Office of Associate Chief Counsel
(Passthroughs and Special Industries)
Enclosures:
Copy of letter
Copy for section 6110 purposes