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Washington, DC 20224

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Person To Contact:

Telephone Number:

Refer Reply To:  
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In Re:

Date:  
December 28, 2004

LEGEND:

Issuer =

State =

Developer =

Partnership A =

Partnership B =

Project =

Bonds =

Date 1 =

a =

b =

Dear

This is in response to your request for a ruling that ownership by multiple taxpayers of the multi-family housing project described herein will not cause the project to fail to qualify as a qualified residential rental project under § 142(d) of the Internal Revenue Code (the “1986 Code”).

### **Facts and Representations**

You make the following factual representations. Issuer is a corporate government agency, created to provide safe, sanitary, and affordable housing to low-income persons within State.

Developer is constructing a residential apartment building (“the Building”) as part of a project (the “Project”) that it intends to qualify as a qualified residential rental project under § 142(d). The Building will be a single building with an independent foundation, one set of outer walls, and one roof. The Project will consist of a residential rental units in the Building, common areas, grounds, parking garage, and parking lot. At least b of the units will be low-income residential rental units (the “Low-Income Units”). The remaining residential rental units of the Project will be rented to individuals at market rates (the “Market-Rate Units”).

Upon completion of construction of the Project, Partnership A will own the Market-Rate Units for federal income tax purposes and Partnership B will own the Low-Income Units for federal income tax purposes.

The Low-Income Units will be interspersed throughout the building with the Market-Rate Units. As a result, on each floor of the Building, there will be both Low-income Units and Market-Rate Units. Residents of the Low-Income Units and residents of the Market-Rate Units will share and use on an equal basis the parking garage and the parking lot, as well as all Building entrances, lobbies and elevator banks, and Project common areas. All residential units of the Project will be similarly constructed, with separate and distinct accommodations containing complete facilities for living, sleeping, eating, cooking, and sanitation. None of the units will be used on a transient basis, and all of the units will be available for lease to members of the general public. The Project will not be a hotel, motel, dormitory, fraternity, or sorority house, rooming house, hospital, nursing home, sanitarium, or rest home.

Issuer issued the Bonds on Date 1 to finance construction of the Project. The Bonds were issued under a single indenture and are secured by a letter of credit and the Project.

## **Law and Analysis**

Section 103(a) provides that, except as provided in § 103(b), gross income does not include interest on any state or local bond. Section 103(b)(1) provides that § 103(a) shall not apply to any private activity bond unless it is a qualified bond. Section 141(e) provides that an exempt facility bond is a qualified bond. Section 142(a)(7) provides that the term exempt facility bond includes any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide qualified residential rental projects.

Section 142(d) defines a qualified residential rental project as a project for residential rental property that, at all times during a qualified project period (defined in §142(d)(2)(A)), meets one of two set-aside requirements elected by the issuer on the issue date of the issue for the project. Specifically, § 142(d)(1) requires that either 20 percent or more of the residential units in the project be occupied by individuals whose income is 50 percent or less of area median gross income or 40 percent or more of the residential units in the project be occupied by individuals whose income is 60 percent or less of the area median gross income.

Regulations have not been promulgated under § 142(d). Thus, the regulations promulgated pursuant to §103(b)(4) of the Internal Revenue Code of 1954 (the “1954 Code”) continue to apply to bonds issued to finance residential rental property, except as otherwise modified by the Tax Reform Act of 1986 (the “1986 Act”), 1986-3 (Vol.1) C.B. 519-575, and subsequent law. In the 1986 Act, Congress reorganized §§ 103 and 103A of the 1954 Code regarding tax-exempt bonds into § 103 and §§ 141 through 150 of the 1986 Code. Congress intended that to the extent not amended by the 1986 Act, all principles of pre-1986 Act law would continue to apply to the reorganized provisions. See 2 H.R. Conf. Rep.99-841 at 686 (1986), 1986-3 (Vol. 4) C.B. 686.

Under § 1.103-8(b)(4) of the Income Tax Regulations, a residential rental project is a building or structure, together with any functionally related and subordinate facilities, containing one or more similarly constructed units which are used on other than a transient basis, are rented or available for rental for the longer of the qualified project period (as defined in § 1.103-8(b)(7)) or term of the bonds and are available to members of the general public. Substantially all of each project must contain such units and functionally related and subordinate facilities. Hotels, motels, dormitories, fraternity and sorority houses, rooming houses, hospitals, nursing homes, sanitariums, rest homes, and trailer parks and courts for use on a transient basis are not residential rental projects.

A building or structure, under § 1.103-8(b)(8)(iv), is defined as a discrete edifice or other man-made construction consisting of an independent foundation, outer walls, and roof. A single unit which is not an entire building but is merely part of a building is not a building or structure. As such, while single townhouses are not buildings if their foundation, outer walls, and roof are not independent, detached houses and rowhouses are buildings.

The Building is a single building or structure under § 1.103-8(b)(8)(iv) because it consists of an independent foundation, outer walls, and roof. All residential units of the Project (the Low-Income Units and the Market-Rate Units) will be provided by the same issue, the Bonds, and will thus be financed pursuant to a common plan of financing. All residential units of the Project will be similarly constructed, and the Low-Income Units and the Market-Rate Units will not be separated but rather will be interspersed throughout the Building. Finally, as a further indication that the Low-Income Units and the Market-Rate Units are part of a single, integrated project, all residents of the two set of units will share and use on an equal basis the parking garage and parking lot, as well as all Building entrances, lobbies and elevator banks, and Project common areas.

### **Conclusion**

Based on the facts and representations submitted, we conclude that ownership of the Project by Partnership A and Partnership B does not cause the Project to fail to qualify as a qualified residential rental project under §142(d).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed concerning whether the Project qualifies for low-income housing credits under § 42, whether interest on the Bonds is excludable from gross income under § 103(a), or whether the Project meets additional requirements for a qualified residential project under § 142(d).

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a Power of Attorney on file with this office, a copy of this letter is being sent to Issuer's authorized representative.

The ruling contained in this letter is based upon information and representations submitted by Issuer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the materials submitted in support of the request for a ruling, it is subject to verification upon examination.

Sincerely,

Assistant Chief Counsel  
(Exempt Organizations/Employment  
Tax/Government Entities)

By: \_\_\_\_\_  
Timothy L. Jones  
Senior Counsel  
Tax Exempt Bond Branch

CC: