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Person To Contact:

Telephone Number:

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Date:
August 07, 2006

LEGEND

Taxpayer =

Project =

State =

Developer =

Owner 1 =

Owner 2 =

Owner 3 =

Owner 4 =

Owner 5 =

Owner 6 =

Owner 7 =

Partnership =

Court =

Program =

Agency =

Year =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

Date 12 =

Date 13 =

a =

b =

c =

d =

Dear :

This letter responds to a letter dated May 18, 2006, submitted on Taxpayer's behalf requesting a ruling that will waive for Project the 10-year holding period requirement for existing buildings under § 42(d)(2)(B)(ii) of the Internal Revenue Code, pursuant to the authority for the acquisition of certain federally-assisted buildings provided in § 42(d)(6)(C).

Taxpayer represents that the facts are as follows:

FACTS

Taxpayer is a State limited partnership that was organized to acquire and develop Project. The entire project will be designated as low-income housing. Developer, a corporation exempt from Federal income tax under § 501(c)(3) that was organized to foster the development of low-income housing, among other purposes, will act as the developer and sponsor of Project. Developer is a State nonprofit public benefit corporation.

Project is an apartment complex consisting of a buildings containing b apartments in total. Project was constructed in Year. Project is owned by Owner 2, Owner 3, Owner 4, Owner 5, Owner 6, and the Estate of Owner 7 (by Owner 5, the executor) (collectively, "the sellers"). Prior to the sellers' ownership of Project, it was acquired by Owner 1 and Owner 7 on Date 1. On Date 2, Owner 1 and Owner 7 transferred Project to Partnership, a State limited partnership, of which Owner 1 and Owner 7 each owned a five percent general partner interest and a forty-five percent limited partner interest. On Date 3, Owner 1 died intestate. Court confirmed in an order issued on Date 4, that any property of the estate of Owner 1 shall be distributed in equal shares among the heirs (Owner 2, Owner 3, Owner 4, Owner 5, and Owner 6). Pursuant to the partnership agreement of Partnership, upon the death of Owner 1, Partnership should have terminated and dissolved. On Date 5, Owner 7, as the sole surviving general partner of Partnership, terminated and dissolved Partnership and the assets of Partnership were distributed as follows: an undivided one-half interest to Owner 7 and an undivided one-half interest to the heirs (Owner 2, Owner 3, Owner 4, Owner 5, and Owner 6). The distribution of assets in liquidation of Partnership on Date 5 was the last placed-in-service date for Project. Owner 7 died on Date 6. On Date 7, Owner 5 was appointed as executor of the estate of Owner 7.

Project has a loan under Program with a balance of \$c. Agency is the mortgagee and the sellers and their predecessors in interest are the mortgagors on the loan.

Pursuant to a letter from Agency dated Date 8, Project is eligible for pre-payment of this loan. Agency provided the requisite certification for Project in a letter dated Date 13.

Developer entered into a Purchase and Sale Agreement on Date 9, a First Addendum to the Purchase and Sale Agreement on Date 10, and a Second Addendum to the Purchase and Sale Agreement on Date 11 (collectively, "the contract"), for the purchase of Project from the sellers for \$d, including the assumption of the then current balance of the Program loan. Developer has assigned all of its interest in the contract to Taxpayer pursuant to an Assignment of Purchase and Sale Agreement dated Date 12 and Taxpayer has a binding contract to purchase Project.

After acquiring Project, Taxpayer intends to complete a substantial rehabilitation of Project. All of the units in Project will be for low-income seniors and Taxpayer represents that it will meet all requirements for low-income projects under § 42 and the safe harbor for tax exempt organizations that provide affordable housing.

Taxpayer makes the following additional representations:

1. The acquisition of Project will be by purchase (as defined in § 179(d)(2), as applicable under § 42(d)(2)(D)(iii)(I));
2. The buildings in Project were not previously placed in service by Taxpayer or by a person who was a related person (as defined in § 42(d)(2)(D)(iii)(II)) with respect to Taxpayer as of the time Project was last placed in service;
3. As of the earlier of the time of acquisition of Project or the time of the application for the waiver, (i) the mortgage on Project is eligible for pre-payment or under Section 502(c) of the Housing Act of 1949 within one year after the date of the application for such a waiver, (ii) the appropriate Federal official has certified to the Secretary that it is reasonable to expect that, if the waiver is not granted, such building will cease complying with its low-income occupancy requirements, and (iii) the eligibility to prepay such mortgage without the approval of the appropriate Federal official has been waived by all persons who are so eligible and such waiver is binding on all successors of such persons;
4. To the best of the knowledge of Taxpayer or Taxpayer's representatives, there have been no nonqualified substantial improvements to the buildings in Project since they were last placed in service;
5. To the best of the knowledge of Taxpayer or Taxpayer's representatives, no prior owner of Project was allowed a low-income housing tax credit under § 42 for Project;
6. All terms and conditions of § 42 and related sections, including substantial rehabilitation in accordance with the minimum requirements of § 42(e)(3)(A), will be met

except for the 10-year holding period requirement of § 42(d)(2)(B)(ii), which is the requirement Taxpayer asks be waived under the authority granted the Secretary of the Treasury by § 42(d)(6)(C); and

7. Taxpayer has complied with the applicable requirements of § 1.42-2.

RULING REQUESTED

Taxpayer requests a waiver of the 10-year holding period requirement in § 42(d)(2)(B)(ii) with respect to the acquisition of Project from the sellers pursuant to § 42(d)(6)(C).

LAW AND ANALYSIS

Section 38(a) provides for a general business credit against tax that includes the amount of the current year business credit. Section 38(b)(5) provides that the amount of the current year business credit includes the low-income housing credit determined under § 42(a).

For an existing building to qualify for the 30-percent present value low-income housing credit, § 42(d)(2)(B)(ii) requires there be a period of at least 10 years between the date of the building's acquisition by the taxpayer and the later of--

- (I) The date the building was last placed in service, or
- (II) The date of the most recent nonqualified substantial improvement of the building.

Section 42(d)(6)(A) provides an exception to the 10-year holding period requirement of § 42(d)(2)(B)(ii). It provides that a waiver may be granted for a federally-assisted building if the Secretary determines that the waiver is necessary--

- (i) to avert an assignment of the mortgage secured by property in the project (of which such building is a part) to the Department of Housing and Urban Development or the Farmers Home Administration (now Rural Housing Service, USDA-RHS), or
- (ii) to avert a claim against a Federal mortgage insurance fund (or such Department or Administration) with respect to a mortgage which is so secured.

Section 42(d)(6)(C) provides that a waiver may be granted under § 42(d)(6)(A) (without regard to clauses (i) and (ii)) for a federally-assisted building described in § 42(d)(6)(B)(ii) or (iii) if--

- (i) the mortgage on such building is eligible for prepayment under subtitle B of the Emergency Low-Income Housing Preservation Act of 1987 or under section 502(c) of the Housing Act of 1949 at any time within 1 year after the date of application for such a waiver;

- (ii) the appropriate Federal official certifies to the Secretary that it is reasonable to expect that, if the waiver is not granted, such building will cease complying with its low-income occupancy requirements; and
- (iii) the eligibility to prepay such mortgage without the approval of the appropriate Federal official is waived by all persons who are so eligible and such waiver is binding on all successors of such persons.

Under § 42(d)(6)(B)(ii) and (iii) a "federally-assisted building" is any building that is substantially assisted, financed, or operated under section 221(d)(3) or 236 of the National Housing Act, or under section 515 of the Housing Act of 1949, as such Acts were in effect on the date of enactment of the Tax Reform Act of 1986 (October 22, 1986).

Section 1.42-2 contains requirements that must be satisfied before the Secretary will grant the waiver referred to in § 42(d)(6). Taxpayer's representations, including a written certification from Agency, indicate that these requirements have been satisfied.

Based solely upon the above facts, Taxpayer's representations, and the certification from Agency, we have determined that Project buildings are federally-assisted within the meaning of § 42(d)(6)(B)(iii), the Program loan on Project is eligible for prepayment, the appropriate Federal official has certified that absent the requested waiver it is reasonable to expect that if the waiver is not granted Project will cease to comply with its low-income occupancy requirements, and the ability to prepay the mortgage without Agency's consent will be waived by Taxpayer and will be binding on all successors of Taxpayer. Therefore, we rule that the 10-year holding period requirement of section 42(d)(2)(B)(ii) is waived for Taxpayer's acquisition of Project pursuant to § 42(d)(6)(C).

No opinion is expressed or implied regarding the application of any other provision in the Code or regulations. Specifically, no opinion is expressed or implied regarding whether Taxpayer's costs of acquisition and rehabilitation of Project buildings will otherwise qualify for the low-income housing credit under § 42.

This ruling is directed only to the Taxpayer which requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this letter should be filed with the Federal income tax return for Taxpayer and its partners for the first taxable year in which the low-income housing credit for Project is claimed.

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

Sincerely,

/s/ Paul F. Handleman

Paul F. Handleman
Senior Technician Reviewer
Branch 5
Office of Associate Chief Counsel
(Passthroughs and Special Industries)