Internal Revenue Service

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July 7, 2008

Legend

Taxpayer:

Non-profit Corporation:

Historic Building:

Dear

This responds to a letter dated December 28, 2007, requesting a private letter ruling under section 168(h)(1)(B) of the Internal Revenue Code ("Code") regarding whether certain property is tax-exempt use property.

FACTS

Non-profit Corporation qualifies for federal income tax purposes as a section 501(c)(3) organization. Non-profit Corporation owns a four-story building listed in the National Register of Historic Places ("Historic Building") in which it operates a visual arts college. Non-profit Corporation plans to transfer the Historic Building to Taxpayer, a for-profit

limited liability company. Taxpayer will substantially rehabilitate the Historic Building and will claim rehabilitation tax credits under section 47 of the Code.

As part of the rehabilitation project, Taxpayer intends to construct a new four-story building ("Addition") directly adjacent and connected to the Historic Building. Planning for and construction of the Addition has been an inherent component of the rehabilitation of the Historic Building. The configuration of the floors and doorways of the Addition were specifically designed to integrate the Historic Building and the Addition, including passageways between the two structures. The actual construction of the Addition will take place at substantially the same time as the historic rehabilitation of the Historic Building, and both are being managed by the same developer.

After the rehabilitation and construction projects are completed, the Taxpayer will lease a portion of the Historic Building and the Addition back to the Non-profit Corporation.

RULING REQUESTED

Taxpayer asks for a ruling that the Addition and the Historic Building will be treated as part of the same project and therefore as one property for purposes of the 35-percent threshold test of section 168(h)(1)(B)(iii) of the Code.

LAW & ANALYSIS

Section 168(h)(1)(B)(i) of the Code defines the term "tax-exempt use property," in the case of nonresidential real property, to mean that portion of the property leased to a tax-exempt entity in a disqualified lease.

Under section 168(h)(i)(B)(ii), the term "disqualified lease" means any lease of the property to a tax-exempt entity, but only if: (I) part or all of the property was financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103(a) and such entity (or a related entity) participated in such financing, (II) under such lease there is a fixed and determinable price purchase or sale option which involves such entity (or a related entity) or there is the equivalent of such an option, (III) such lease has a term in excess of 20 years, or (IV) such lease occurs after a sale (or other transfer) of the property by, or lease of the property from, such entity (or a related entity) and such property has been used by such entity (or a related entity) before such sale (or other transfer) or lease.

Under section 168(h)(1)(B)(iii), property will be considered "tax-exempt use property" only if the portion of the property leased to tax-exempt entities in disqualified leases is more than 35 percent of the property ("35-percent threshold test").

Section 168(h)(1)(B)(iv) provides that improvements to a property (other than land) shall not be treated as a separate property for purposes of section 168(h)(1)(B).

Section 1.168(j)-1T, Q&A-6, of the temporary Income Tax Regulations provides that the phrase "more than 35 percent of the property" means more than 35 percent of the net rentable floor space of the property. The net rentable floor space does not include the common areas of the building, regardless of the terms of the lease. For purposes of the 35-percent threshold test, two or more buildings will be treated as separate properties unless they are part of the same project, in which case they will be treated as one property. Two or more buildings will be treated as part of the same project if the buildings are constructed, under a common plan, within a reasonable time of each other on the same site and will be used in an integrated manner. See also the Deficit Reduction Act of 1984, H. Rep. No. 432, Pt. 2, 98th Cong., 2d Sess. 1147; S. Prt. No. 169, Vol. 1, 98th Cong., 2d Sess. 132 (1984).

Taxpayer asserts in its ruling request that in determining whether the 35-percent threshold test has been met the Addition should be counted as part of the same property as the Historic Building under section 168(h)(1)(B)(iii) of the Code. In our view, the Taxpayer's facts and representations support treating the Historic Building and the Addition as part of the same project because the renovation of the Historic Building and construction of the Addition will be under a common plan, within a reasonable time of each other on the same site and the Addition will be used in an integrated manner with the Historic Building.

First, the Addition will be directly adjacent and connected to the Historic Building. In addition, the construction of the Addition is being conducted as part of the same common plan as the renovation of the Historic Building. Planning for and construction of the Addition has been an inherent component of the rehabilitation of the Historic Building. Configuration of the floors and doorways of the Addition were specifically designed to integrate the two buildings and passageways between the two structures are included in the construction plans. Consequently, we think that the Addition is constructed on the same site as the Historic Building.

Further, the construction of the Addition will take place at substantially the same time as the rehabilitation of the Historic Building. Moreover, both are being managed by the same developer. Furthermore, these buildings will be used in an integrated manner. We therefore conclude that the Historic Building and the Addition are part of the same project, and that this project constitutes the "property" for purposes of applying the 35-percent threshold test of section 168(h)(1)(B)(iii).

CONCLUSIONS

Based on the facts and representations made by the Taxpayer, we conclude, as discussed more fully above, that the Addition and the Historic Building will be treated as part of the same project and therefore as one property for purposes of the 35-percent threshold test of section 168(h)(1)(B)(iii) of the Code.

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, we make no determination as to the application of the 35-percent threshold test of section 168(h)(1)(B)(iii) of the Code to the project.

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

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

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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

Sincerely,

William A. Jackson
Branch Chief, Branch 5
(Income Tax & Accounting)

cc: