

Internal Revenue Service

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Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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Date:
September 01, 2010

Legend:

Taxpayer =

Project =

Lessor =

General Partner =

Corporation =

State =

Issuer =

Limited Partner 1 =

Limited Partner 2 =

Limited Partner 3 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

o =

p =

Dear _____ :

This letter responds to your authorized representative's letter dated June 3, 2010, on behalf of Taxpayer, requesting a ruling on the application of the requirements of § 42(h)(4) of the Internal Revenue Code to Project.

The relevant facts as represented in your submission are set forth below.

Facts:

Taxpayer is a limited partnership formed on a, for purposes of owning, developing, constructing and operating Project, a b unit residential rental apartment building. Taxpayer acquired its interest in the land underneath Project pursuant to a long-term ground lease with Lessor.

General Partner, Taxpayer's general partner, is an affiliate of Corporation, which is a State nonprofit corporation. On c, Limited Partner 1 was admitted to Taxpayer with a d percent interest as the investor limited partner in exchange for a capital contribution in the amount of \$e. Subsequently, the limited partnership interest of Limited Partner 1 was transferred to Limited Partner 2 and Limited Partner 3.

Taxpayer began constructing Project in f. Taxpayer expects to incur construction costs resulting in an expected basis of approximately \$g. Issuer provided construction financing in the amount of a \$h loan (Bond Loan) financed with proceeds of tax-exempt bonds (Bonds), which are subject to the volume cap under § 146 in accordance with § 42(h)(4). The Bond Loan is a nonrecourse obligation that bears interest at a variable rate during the construction period. It is anticipated that the Bond Loan will convert to a permanent loan of \$i with fixed interest of j percent per annum. The Bond Loan will finance more than 50 percent of the basis (including land) of Project.

Project was placed in service in k. Taxpayer elected to begin the credit period, as defined in § 42(f)(1), in l. Approximately \$m of the Bond Loan proceeds were expended for project costs prior to the placement in service of Project which was not sufficient to meet the 50 percent or more requirement of § 42(h)(4)(B) (50 percent test). However, an additional \$n of the Bond Loan proceeds were expended for project costs through o which, together with the prior expenditures of Bond Loan proceeds, are sufficient to meet the 50 percent test of § 42(h)(4)(B). It is anticipated that Taxpayer will repay a portion of the Bond Loan and a corresponding portion of the Bonds will be redeemed in p so that less than 50 percent of Project's basis will be supported by Bonds after p, which is before the end of the first year of the credit period for Project.

Ruling Requested:

The redemption of all or any portion of the Bonds used to satisfy the 50 percent test of § 42(h)(4)(B) after Project has been placed in service and after the 50 percent test has been met (taking into account Bond Loan proceeds expended after Project has been placed in service), but before the end of the first year of the credit period for Project, will not, in and of itself, result in a determination that Project was not financed with tax-exempt bonds under § 42(h)(4)(B).

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(f)(1) defines the credit period, with respect to any building, as the period of 10 taxable years beginning with (A) the taxable year in which the building is placed in service, or (B) at the election of the taxpayer, the succeeding taxable year, but only if the building is a qualified low-income building as of the close of the 1st year of such period.

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)(4)(A) provides that § 42(h)(1) does not apply to any portion of the credit 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 or such financing is refundable as described in § 146(i)(6).

Section 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 a tax-exempt obligation 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 the Bond Loan proceeds were spent on project costs incurred before and after Project was placed in service. Taxpayer also represents that as of o, which is a date after Project was placed in service, expended Bond Loan proceeds were 50 percent or more of the aggregate basis of Project and the land on which Project is located. Taxpayer further represents that a portion of the Bonds will be redeemed so that less than 50 percent of Project's basis will be supported by Bonds after p, a date that is after o, but before the end of the first year of the credit period for Project.

Accordingly, based solely on the representations and relevant law as set forth above, we conclude that the redemption of all or any portion of the Bonds used to satisfy the 50 percent test of § 42(h)(4)(B) after Project has been placed in service and after the 50 percent test has been met (taking into account Bond Loan proceeds expended after Project has been placed in service), but before the end of the first year of the credit period for Project, will not, in and of itself, result in a determination that Project was not financed with tax-exempt bonds under § 42(h)(4)(B).

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.

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.

The rulings contained in this letter are based upon information and representations submitted by 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.

In accordance with the power of attorney on file, a copy of this letter is being sent to Taxpayer's authorized legal representative.

Sincerely yours,

Christopher J. Wilson

Christopher J. Wilson
Senior Counsel, Branch 5
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)