

Private Letter Ruling 8911026, IRC Section 42

December 16, 1988

This letter is in response to your letter dated November 21, 1988 pertaining to a private letter ruling issued to your client, Partnership, on September 27, 1988. You now advise us that the parties have restructured the transaction set forth in the private letter ruling, and you request that a supplemental letter ruling be issued to incorporate the changes made in the transaction. The facts and representations set forth in the September 27, 1988 ruling letter are hereby incorporated in and made part of this ruling.

The facts submitted for consideration, as amended, are as follows:

L, a State M corporation, is the Managing General Partner of Partnership, a State N limited partnership that was formed for the purpose of acquiring, rehabilitating, and operating the Project, which is a low-income housing project. Partnership entered into a binding contract as of a to acquire the Project from Seller, a State O limited partnership that had placed the project in service on b. The purchase price is to be \$ c plus an assumption of certain outstanding operating expenses and an assumption of the obligations and debts outstanding as of closing under the HUD Note (as defined below) and the Flexible Subsidy Note (defined below).

At the time of closing, Partnership will take the Project subject to the following:

(a) the Mortgage Note in the Principal Amount, as of d, of \$ e which the U.S. Department of Housing and Urban Development (HUD) has endorsed for FHA-insurance (the HUD Note), and

(b) the Flexible Subsidy loan in the outstanding principal amount, as of d, of \$ f on which interest has accrued (the Flexible Subsidy Note).

An all-inclusive residual note (the Residual Note), dated b, in the principal amount of \$ g with interest at h percent per annum, will be compromised and paid off at closing.

The mortgagees for the HUD Note, the Flexible Subsidy Note, and the Residual Note are, respectively, P, HUD, and Q; and in the same order the mortgagors for these notes are Q, Q, and R.

Partnership certifies that the buildings comprising the Project were not previously placed in service by Partnership or related party as defined in section 42 of the Code, and that the buildings are federally assisted in that (i) the first mortgage is financed and insured under section 236 of the National Housing Act of 1934; (ii) the Project is subject to a Flexible Subsidy Note pursuant to section 201 of the Housing and Community Development Amendments of 1978; and (iii) some of the apartment units in the Project receive subsidies under section 8 of the United States Housing Act of 1937.

Therefore, based on the above representations, the ruling in our letter dated September 27, 1988 that the requirement under section 42(d)(2)(B)(ii) of the Code is waived with respect to Partnership's proposed acquisition of the Project, is not affected by the amended representations.

No opinion is expressed or implied regarding whether Partnership's costs of acquisition and rehabilitation of the buildings in the Project will qualify otherwise for the low-income housing credit under section 42 of the Code.

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

In accordance with the power of attorney on file, this letter is being sent to you as the authorized representative of Partnership. A copy of this letter and of our ruling letter of

September 27, 1988 should be filed with each partner's income tax return for the tax year in which the transaction covered by this ruling is consummated.

We are sending a copy of this letter to HUD in accordance with that agency's request.