Private Letter Ruling 9003008, IRC Section 42

Date: February 13, 1989

Dear ***

This is in response to your letter dated October 14, 1988, submitted on behalf of Taxpayer requesting a ruling under section 42(f)(1) of the Internal Revenue Code. The facts and representations submitted are as follows.

Taxpayer is a limited partnership located in City A. Taxpayer's purpose is to purchase, acquire, own, develop, improve and operate g acres of real estate located at Route D, City E, County F, and know as G for use as low-income rental housing: Taxpayer is subject to the jurisdiction of the District Office of City H.

Taxpayer represents that it will rent at least 40% of the apartment units in G to individuals who have incomes 60% or less of the area median gross income as required under section 42(g)(1)(B) of the Code in order for Taxpayer to qualify for the low-income housing tax credit. In addition, Taxpayer represents that it has and will continue to comply with all other provisions of section 42 in order to be eligible for the low-income housing tax credit.

On b, the State C Housing Development Fund (Fund) allocated a $c low-income housing credit to Taxpayer for the f calendar year, as evidenced by the tax Form 8609 Low-income Housing Credit Allocation Certification Taxpayer received from the Fund. To the best of Taxpayer's knowledge, the Fund included the allocation made to Taxpayer in the Form 8610 the Fund filed with the Internal Revenue Service for calendar year f.

Taxpayer placed G in service in d. The general partners of Taxpayer, however, decided to elect to begin the low-income housing tax credit for G in e. Such an election may be made under section 42(f)(1) of the Code.

Under section 42 of the Code, a taxpayer is allowed a low-income housing tax credit if (1) certain requirements for operating a residential rental project are met, and (2) certain administrative procedures are met for applying for and claiming the credit. Under section 42(a), the amount of the low-income housing tax credit for any taxable year in the credit period shall be the amount equal to the applicable percentages of the qualified basis of each qualified low-income building. The credit period is defined in section 42(f)(1).

Section 1002(1)(2)(B) of the Technical and Miscellaneous Revenue Act of 1988 amended section 42(f)((1) of the Code to provide that (1) for purposes of this section, the term "credit period" means, with respect to any building, 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. Such an election, once made, shall be irrevocable.

Sections 1.42-lT(e)(1) and 1.42-lT(h)(2) of the Temporary Income Tax Regulations provide that the taxpayer is required to complete the Form 8609, on which a housing credit agency made the applicable housing credit allocation, and submit a copy of such Form 8609 with its federal income tax return for each year in the compliance period.

Section 42(i)(1) of the Code defines the term "compliance period" as, with respect to any building, the period of 15 taxable years beginning with the 1st taxable year of the credit period with respect thereto.

Based upon the above authority, we believe Taxpayer may elect to begin the credit period the year after it places the building in service by checking the appropriate box in Part II of the Form 8609, and attaching Form 8609 to its federal income tax return for the first year of the 10-year credit period and for each year of the 15- year compliance period. If Taxpayer does not claim a low-income tax credit on its timely filed federal income tax return (taking any extensions in account) for the year in which it places the building in service, or fails to timely file the federal income tax return, the taxpayer is deemed to have made the irrevocable election to begin the credit period the succeeding tax year.

Therefore, based solely on the facts and representations in the letter from Taxpayer's representative, Taxpayer may elect to defer the credit period to its e tax year by checking the election box on Part II of Form 8609 and attaching Form 8609 to its e federal income tax return. No opinion is expressed or implied regarding the application of any other provisions of the Code or regulations. 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.

Temporary or final regulations pertaining to the issues addressed in this ruling have not been adopted. This ruling is issued under the authority of Rev. Proc. 88-18, 1988-20 I.R.B. 32, that enables the Service to issue rulings for Code sections enacted or amended by the Tax Reform Act of 1986 or the Revenue Act of 1987. Therefore, this ruling may be modified or revoked by the Service. However, when the criteria in section 16.05 of Rev. Proc. 89-1, 1989- 1 I.R.B. 20 are satisfied, a ruling is not modified or revoked retroactively except in rare or unusual circumstances.

In accordance with the power of attorney on file, this letter is being sent to your authorized representative.

A copy of this letter should be filed with the income tax return of each partner in Taxpayer for the taxable year in which Taxpayer commences the 10-year credit period.

Sincerely yours,

Assistant Chief Counsel

(Passthroughs and Special Industries)

By: Susan Reaman

Assistant to the Branch Chief

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