

## Private Letter Ruling 9243032, IRC Section 42

Date: July 24, 1992

A limited partnership acquired from a defaulting third-party developer land that was to be developed for a qualified low-income housing project. The limited partnership has proceeded with the project's development under the directives of the agency that originally commissioned the project. The project received a temporary certificate of occupancy (TCO) for a portion of the building. That TCO was renewed several times before a TCO was received for the entire building.

Applying Notice 88-116, 1988-2 C.B. 449, the Service has ruled that the project was placed in service, for purposes of Section 42, on the date of issue for the initial partial TCO.

Dear \*\*\*

This letter responds to your letter of March 18, 1992, and subsequent correspondence submitted on behalf of Taxpayer, requesting a ruling that the Project was placed in service on t1 for purposes of section 42 of the Internal Revenue Code.

Taxpayer has made the following representations.

Taxpayer is a limited partnership formed on t2 under the State X Revised Limited Partnership Act. Taxpayer has four limited partners and one general partner, Corp A. Corp A is a State X corporation and a subchapter S corporation. Corp A's two stockholders are the Project's developers.

Project, located in Area Y, is a low-income housing development for the elderly. The Project consists of a units, with two floors of commercial space, parking for the residential and commercial space, and the land on which it is situated.

Agency purchased the land for the Project for over \$b and sold it to a third-party developer for approximately \$c. The third-party developer defaulted on its obligation to Agency without constructing the Project. Agency then requested that Individual X, a Corp A stockholder, develop the Project. In t3, Taxpayer acquired the land from the third-party developer and proceeded with the Project's development.

In t4, Taxpayer applied for and received a reservation of t4 low-income housing credit dollar amounts for an annual amount of \$d. In t5, Taxpayer received a carryover allocation of low-income housing credit dollar amounts. Construction of the Project began in t6, and was substantially completed in t7.

In late t7, Taxpayer requested that the Department inspect the Project and issue a certificate of occupancy. Each of the Department's e divisions must inspect a building and provide the necessary "sign-off" before a certificate of occupancy can be issued. This process began in early t8 as each division made on-site inspections. The electrical and fire divisions did not inspect the Project until t1, at which time all other divisions had signed-off.

Although inspectors from the electrical and fire divisions had been making regular site visits to observe the ongoing work, it was not until t1 that they determined that, as an extra precaution, certain aspects of the fire life safety system needed revisions. Although the panel was fully functional and met all Department code requirements, Taxpayer agreed to make the modification.

The Department issued a temporary certificate of occupancy (TCO) on t1 for a portion of the building and agreed to issue a TCO for the entire building when the modification was complete. Otherwise, prior to t1 all units in the Project were complete and available for occupancy. The initial TCO was renewed on several occasions. On t9, a TCO was issued for all units in the Project until t10. Since t9, more than f units have been occupied and Taxpayer anticipates that all units will be occupied by t11.

Taxpayer submitted a letter dated t12, acknowledged by the Chief of the Department, stating that the intent of the Department was to permit the immediate permanent occupancy of the portion of the Project for which the TCO was issued on t1 once the fees for the TCO were paid on t1, and occupancy was to continue thereafter as long as the temporary certificate of occupancy was renewed in a timely fashion. A final certificate of occupancy will be issued when certain street work on Z Street has been completed. The Project fronts onto three streets and repairs have been completed on two of the three streets. Taxpayer expects the work on Z Street to be completed in t13, at which time the Department will issue the final certificate of occupancy for the Project.

Section 38(b)(5) of the Code provides for a low-income housing credit determined under section 42(a). Section 42(a) provides that the amount of the low-income housing credit determined under this section for any tax year in the credit period shall be an amount equal to the applicable percentage of the qualified basis of each qualified low-income building. The credit is available for qualified low-income buildings placed in service after calendar year 1986.

Notice 88-116, 1988-2 C.B. 449, provides that the placed in service date for a new or existing building used as residential rental property is the date on which the building is ready and available for its specifically assigned function, i.e., the date on which the first unit in the building is certified as being suitable for occupancy in accordance with state or local law. Under Notice 88-116, a building may be placed in service even if the rental units in the building are not currently occupied by low-income tenants.

Whether a building is ready and available for its specifically assigned function depends upon all the facts and circumstances. The issuance of a certificate of occupancy is one indication of a building's readiness and availability for its specifically assigned function. Other facts and circumstances are also looked at in determining that a building is ready and available for its specifically assigned function.

Based on the facts and circumstances as represented by Taxpayer, we rule that the Project was placed in service, under section 42 of the Code, on t1.

No opinion is expressed or implied regarding the application of any other provisions of the Code or regulations. No opinion is expressed whether the Project otherwise

qualifies 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) provides that it may not be used or cited as precedent.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling may be modified or revoked if the adopted temporary or final regulations are inconsistent with any conclusion of this ruling. See section 11.04 of Rev. Proc. 92-1, 1992-1 I.R.B. 9, 30. However, when the criteria in section 11.05 of Rev. Proc. 92-1 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

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

A copy of this letter should be attached to Taxpayer's income tax return for the taxable year in which Taxpayer placed the building in service.

Sincerely yours,

Donna M. Young

Assistant to the Chief,

Branch 5

Office of the Assistant Chief Counsel

(Passthroughs & Special Industries)