Private Letter Ruling 9506016, IRC Section 42

Date: November 4, 1994

Dear ***

This is in response to your letter of June 1, 1994, submitted on behalf of Partnership B requesting a private letter ruling that the date on which buildings in a low-income housing project are "placed in service" for purposes of section 42(h)(1)(F) of the Internal Revenue Code is the same date on which rehabilitation expenditures treated as separate new buildings are treated as "placed in service" under section 42(e)(4)(A). The following factual representations are submitted.

Partnership B's annual accounting period is July 1 to June 30, and its over-all method of accounting is the accrual method. The City C District Office will have examination jurisdiction over the returns of Partnership B.

On a, Partnership B acquired Project D, a substantially occupied, low-income apartment complex located in City E, originally financed by the Federal Housing Administration pursuant to section 221(d)(3) of the National Housing Act and further subject to the proviso of section 221(d)(5) of the National Housing Act. Project D is comprised of h separate buildings. Project D was acquired subject to the outstanding balance of this loan.

At the time of acquisition, Project D was a severely distressed b development and the purpose of the Partnership was to rehabilitate Project D in order to provide decent, safe and sanitary housing. Rehabilitation was to occur while Project D was occupied.

The acquisition and rehabilitation cost approximately c with no less than d being spent for rehabilitation. The acquisition and rehabilitation was financed by mortgage loans from Finance Agency F and several other governmental financing sources. Rehabilitation commenced immediately after the Partnership's acquisition of Project D and has continued through the present date.

On e, Housing Credit Agency G issued a carryover allocation of 1993 credit to Partnership B pursuant to section 42(h)(1)(F) for the rehabilitation expenditures, treating each of the h buildings in Project D as separate h buildings under section 42(e). The housing credit amount allocated to the h buildings for aggregate rehabilitation costs in Project D is f. Project D has not received nor will Partnership B request any acquisition credits. At the time the allocation was made the physical rehabilitation was substantially complete and Project D substantially occupied. Partnership B intends to place the rehabilitation expenditures in service on or prior to g.

Section 38(a) of the Code provides for a general business credit against tax that includes the amount of the current year business credit.

Section 38(b)(5) provides that the amount of the current year business credit includes the low-income housing credit determined under section 42(a). The low-income housing credit that may be claimed in any year is subject to the general business tax credit limitation of section 38(c).

Section 42(a) of the Code provides that, for section 38 purposes, the amount of the low-income housing credit determined under section 42 for any taxable year in the credit period shall be an amount equal to the "applicable percentage" of the qualified basis of each qualified low-income building.

Section 42(c)(1)(A) of the Code defines the qualified basis of any qualified low-income building for any taxable year as an amount equal to (i) the "applicable fraction" (determined as of the close of the taxable year) of (ii) the eligible basis of the building (determined under section 42(d)(5)). Under section 42 (c)(1)(B), the "applicable fraction" is the smaller of the unit fraction (the number of low-income units divided by the number of all residential rental units) or the floor space fraction (the floor space of the low-income units divided by the floor space of all residential rental units).

Section 42(e)(1) of the Code provides that rehabilitation expenditures paid or incurred by the taxpayer with respect to any building shall be treated for purposes of section 42 as a separate new building. Section 42(e)(2)(A) defines the term "rehabilitation expenditures" as amounts chargeable to capital account and incurred for property (or additions or improvements to property) of a character subject to the allowance for depreciation in connection with the rehabilitation of a building. Under section 42(e)(2)(B), the term rehabilitation expenditures does not include the cost of acquiring any building (or interest therein).

Section 42(e)(3)(A) provides that rehabilitation expenditures for a building may be treated as a separate new building eligible for the credit only if (i) the expenditures are allocable to one or more low-income units or substantially benefit such units, and (ii) the amount of such expenditures during any 24-month period meets the greater of the following requirements: (I) the amount is not less than 10 percent of the adjusted basis of the building (determined as of the 1st day of such period and without regard to paragraphs (2) and (3) of section 1016(a)), or (II) the qualified basis attributable to such expenditures, when divided by the number of low-income units in the building, is $3,000 or more.

Section 42(e)(4)(A) of the Code provides, in part, that rehabilitation expenditures treated as a separate new building by reason of this subsection are considered placed in service at the close of the 24-month period referred to in paragraph (3)(A). Section 42(e)(4)(8) provides that the applicable fraction under subsection (c)(1) for the rehabilitation expenditures is the applicable fraction for the building (without regard to paragraph (1)) for which the expenditures were incurred.

Under section 42(e)(3)(A) of the Code, a taxpayer may aggregate all rehabilitation expenditures incurred during any 24-month period to meet the minimum expenditure

requirement of section 42(e)(3)(A). Rev. Rul. 91-38, 1991-2 C.B. 3, provides that if the rehabilitation is completed and the minimum expenditures requirement of section 42(e)(3)(A) is met in less than 24 months, the expenditures may be treated as placed in service at the close of that period; however, in no event may the aggregation period exceed 24 months. Therefore, rehabilitation expenditures are treated as placed in service at the close of the 24-month or shorter aggregation period in which the rehabilitation is completed and the expenditure requirement of section 42(e)(3)(A) is met.

A taxpayer may not claim a credit on a qualified low-income building in excess of the housing credit dollar amount allocated to the building by the state or local housing agency in whose jurisdiction the building is located. Under section 42(h)(1)(B), an allocation is taken into account only if it occurs not later than the close of the calendar year in which the building is placed in service, unless one of the exceptions in section 42(h)(1)(C), (D), (E), or (F) apply.

Section 42(h)(1)(F) of the Code provides that in the case of a project which includes (or will include) more than 1 building, an allocation meets the requirements of this subparagraph if – (I) the allocation is made to the project for a calendar year during the project period; (II) the allocation only applies to buildings placed in service during or after the calendar year for which the allocation is made; and (III) the portion of such allocation which is allocated to any building in such project is specified not later than the close of the calendar year in which the building is placed in service. For purposes of clause (I) above, the term "project period" means the period: (I) beginning with the 1st calendar year for which an allocation may be made for the 1st building placed in service as part of such project, and (II) ending with the calendar year the last building is placed in service as part of such project.

Based on the representations submitted, we conclude that Project D's placed in service date for the h buildings, for purposes of the allocation for rehabilitation expenditures under section 42(h)(1)(F), is the same date on which rehabilitation expenditures are placed in service as h separate new buildings under section 42(e)(4)(A).

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. This ruling does not address the application of any other provision of the Code or regulations to the transaction, other [than] those specifically mentioned above.

Sincerely yours,

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Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)