

Private Letter Ruling
Number: **9711021**
Internal Revenue Service
DEC. 21, 1996

Internal Revenue Service
Department of the Treasury
Washington, DC 20224

Dear Sir or Madam:

This letter is our reply to a ruling request submitted on behalf of Issuer and Operator regarding Project that is being constructed with the proceeds of Bonds. The ruling requested is that completion and furnishing of appliances in some of the individual living areas, in the manner described below, will not affect the determination of whether Project constitutes a qualified residential rental project within the meaning of § 142(d) of the Internal Revenue Code. The information and representations provided are summarized below.

Facts and Representations

Issuer, is an instrumentality of State and a body corporate and politic organized by County. Issuer issued Bonds in the amount of \$x and loaned the proceeds to Operator to finance the construction and equipping of Project. Project is intended to be a residential rental project within the meaning of § 142 (d). Specifically, Project is being built and licensed by State's Department of Public Welfare as a personal care home within the meaning of State Law, to meet the needs of the frail elderly.

Each tenant of Project will be required to enter into a lease with a term of not less than 6 months, subject to the provision that any lease may be terminated if the tenant physical condition no longer permits full-time residence in the Project. Project will be available to the general public. A minimum number of units will be occupied by individuals who meet the low and moderate income requirements of § 142 (d).

Project will consist of y similarly constructed separate living areas (hereafter "apartments"), common areas, and functionally related facilities for use by tenants and staff of, and visitors to, Project. Each apartment will contain facilities for independent living including a living area, a sleeping area, bathing and sanitation facilities, and cooking facilities. The facilities in each apartment will be separate and distinct from the facilities in other apartments in the Project. The apartments will vary in size so that some will have two bedrooms, some will have one bedroom, and some will be efficiency apartments.

Operator proposes to equip the cooking area of most of the apartments with & sink, a cooking range, and a full-size refrigerator. However, some of the apartments will contain

appliances of comparable quality including a smaller refrigerator instead of a full-size refrigerator, and a microwave oven instead of a cooking range. It is represented that, for safety reasons, it is not prudent to provide a functioning traditional cooking range in an apartment housing an individual with physical frailties or mental impairments associated with aging. All of the apartments with the alternative appliances will be constructed so that cooking ranges and/or full-size refrigerators may be placed in the apartment without further construction, rewiring, or alteration of the apartment.

One of the common areas of Project will be a dining facility available to all of the residents. It is expected to be used by most tenants for most of their meals, and the cost of meals are to be included in the rental contracts.

Law and Analysis

Section 103 (a) provides that except as provided in subsection (b), gross income does not include interest on any State or local bond.

Section 103 (b) (1) provides that subsection (a) does not apply to any private activity bond that is not a qualified bond within the meaning of § 141. Section 141(e) (1) (A) provides, in part, that the term "qualified bond" means any private activity bond that is an exempt facility bond. Section 142 (a) (7) provides, in part, that the term "exempt facility bond" includes any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide qualified residential rental projects. Section 142(d) describes qualifications that must be met to have a qualified residential rental project.

Section 1.103-8(b) (4) (i) of the Income Tax Regulations defines, in pertinent part, a qualified residential rental project as a building or structure, together with any functionally related and subordinate facilities, containing one or more similarly constructed units that are used on other than a transient basis. In addition, the regulations provide that hotels, motels, dormitories, fraternity and sorority houses, rooming houses, hospitals, nursing homes, sanitariums, rest homes, and trailer parks-and courts for use on a transient basis are not residential rental projects.

Section 1.103-8(b) (8) (i), defines the term "unit" to mean any accommodation containing separate and complete facilities for living, sleeping, eating, cooking, and sanitation. An example is included in that section that illustrates the type of facilities, including cooking facilities, that might be in a complete unit. The illustrated cooking facilities include a refrigerator, a cooking range, and a sink. The definition of a unit is applicable for purposes of § 142 (b).

The residential rental property exempt facility provision originated with § 103(c) (4) (A) of the Internal Revenue Code of 1954 added by the Revenue and Expenditure Control Act of 1968, § 107(a), 1968-2 C.B. 715, 731, that allowed tax-exempt bond financing for certain exempt activities, including residential real property for family units. The Conference Report, H.R.

Conf. Rep. No. 1533, 90th Cong., 2d Sess., 804, (1968), 1968-2 C.B. 801, 804, states that the new provision applies in respect of obligations issued to provide residential real property for family Units:

A family unit is a building or portion thereof which contains complete living facilities which are to be used on other than a transient basis by only one family consisting of one or more persons. Thus, an apartment which is to be used on other than a transient basis by one family, which contains complete facilities for living, sleeping, eating, cooking, and sanitation constitutes a family unit. Hotels, motels, dormitories, fraternity and sorority houses, rooming houses, hospitals, sanitariums, rest homes, and parks and courts for mobile homes do not constitute residential real property.

The provision was reconsidered when enacting the Mortgage Subsidy Bond Tax Act of 1980 (the "Act"), § 1103, 1980-2 C.B. 512, 517. The House Report accompanying the Act states:

Only projects which provide units that contain complete living facilities which are to be used other than on a transient basis will qualify under this provision as an exempt facility. In general, a project is a building or structure which contains units having complete living facilities and facilities which are functionally related and subordinate to the living facilities." H.R. Rep. No. 1167, 96th Cong., 2d Sess. 469, 470 (1990), 1980-2 C.B. 530, 545.

Similarly, in the legislative history of § 142(d) of the Internal Revenue Code of 1986, the Conference Report in note 24 describes the conference agreement with respect to multifamily residential rental projects as follows:

As under present law, multifamily residential rental property is eligible for tax-exempt financing only if the housing units are used other than on a transient basis. In addition, each residential rental unit must include separate and complete facilities for living, sleeping, eating, cooking, and sanitation. Hotels, dormitories, hospitals, nursing homes, retirement homes, and trailer parks do not qualify as residential rental property. 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. 11-699, (1986), 1986-3 (Vol. 4) C.B. 699.

Thus, the legislative history pertaining to qualified residential rental units has continually focused upon whether the units will be used on an other than transient basis and whether those units will contain complete living facilities, including cooking facilities, for the intended users of the units.

Whether or not specific appliances provide complete cooking facilities must be determined based upon the facts and circumstances of each particular case. The cooking facilities and appliances that are required by § 1.103-8(b) (8) (i) to be in each unit of a nontransient residential rental property must give the intended tenant of the property the capability of food storage (including refrigeration), food preparation, and clean up. With the required facilities, permanent residents may prepare food for themselves and their guests independent of facilities outside of that unit, such as a common dining or kitchen

facility. The size and type of appliances necessary to meet these requirements in an individual case depends on the type of tenant for which the residential rental facility is intended. Thus, relevant considerations in determining whether a cooking facility is complete for purposes of the regulations include, but are not limited to, the characteristics of the intended occupants of the residential rental facility as well as the attributes of the particular appliances under consideration.

A microwave oven like x was not a common household appliance when § 1.103-8(b) (8) (i) was promulgated. However, this type of oven can perform many of the same functions as a traditional cooking range and may be part of complete cooking facilities. Under the circumstances of this case, for the intended nontransient residents with the disabilities previously discussed, x microwave oven and the other cooking facilities described above are complete cooking facilities.

Conclusion

Based on the information and documentation provided, we conclude that Project will provide accommodations that include separate and complete residences for elder citizens on other than a transient basis, and will not affect the determination of whether Project constitutes a qualified residential rental project within the meaning of § 142 Cd).

No comment is made on whether the anticipated contractual relationships to be entered into by tenants that may (1) include rental payments that include the cost of meals to be taken by the tenants in a common dining area, and (2) provide other medically-related services, will cause the Project to be an inherently transient facility like a nursing home.

No opinion is expressed regarding the consequences of the transaction described herein under any section of the Code, the Income Tax Regulations, or the temporary Income Tax Regulations, except as specifically stated in this ruling.

This ruling letter is directed only to the taxpayer which 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 will be modified or revoked by adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the ruling. See § 11 of Rev. Proc. 96-1, 1996-1 I.R.B. 8, 39. However, when the criteria in § 11.05 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

Sincerely, Acting Assistant chief Counsel (Financial Institutions & Products) Assistant to the Chief Branch 5

Enclosure:

Copy for § 6110 purposes