

PRIVATE RULING 9814006

DATE: December 18, 1997

Refer Reply to: CC: DOM : P&SI:5 PLR- 115920-97

LEGEND:

Taxpayer = * * *

State = * * *

City = * * *

Charity = * * *

Company = * * *

Charity Premises * * *

District = * * *

City Code = * * *

a=***

b=***

c= * * *

d=***

f= * * *

g= * * *

h=***

i=***

j=***

k= * * *

Dear * * *

This letter responds to your authorized representative's letter dated I, and subsequent correspondence requesting a ruling on the eligibility of a proposed low-income housing project to receive tax credits under section 42 of the Internal Revenue Code. The relevant facts as represented in your submissions are set forth below.

FACTS:

Taxpayer is a State limited liability company. The current members of the Taxpayer are Charity, a State nonprofit corporation which holds an a percent interest in the Taxpayer, and Company, a State limited liability company, which holds the remaining b percent interest in the Taxpayer. Charity is a non-profit organization exempt from tax under section 501(a), as an organization described in section 501(c)(3). Company is a private, for profit development company assisting with the development and construction of the project. It is anticipated that when the proposed project is placed in service, a c percent interest in the Taxpayer will be transferred to third party investor(s).

The Taxpayer has a calendar year end of d. The Taxpayer's method of accounting for maintaining its accounting books and filing its federal income tax returns is on the

accrual basis. The office of the Internal Revenue Service that has examination jurisdiction over the Taxpayer is the District.

The Taxpayer is a single purpose entity formed to construct, own and manage the project. The purpose of the project is to provide residential rental housing, where certain support services are available, for homeless individuals, particularly for those with an alcohol or chemical dependency. The income levels of this targeted group are at the low-income to poverty levels. The project is proposed to be constructed in City.

The purpose of the project is to provide this targeted homeless population with housing, in a setting where needed support services are available, such that they have the opportunity of transitioning into the mainstream of society as self-sufficient individuals.

While the project is targeted to serve homeless individuals, it is not intended to qualify as “transitional housing for homeless” as contemplated by section 42(i)(3)(B)(iii). Rather, the project is designed to have single room occupancy units (SRO units) With minimum lease terms of 30-days.

The Taxpayer will only provide housing services as it owns and operates the project. However, the project will be located at Charity Premises where Charity operates an alcohol and substance abuse center. The Charity Premises have independent and physically separate facilities to carry-out Charity’s programs; i.e., Charity Premises has facilities for administrative office space, meeting rooms for program seminars and lectures, a small dining facility and facilities to house severe cases of alcohol and substance abuse (lock-down and 24 hour constant care supervision). The Charity Premises facilities are owned and operated by Charity, and are not part of the project, other than being available for tenants of the project who choose to participate in support services provided. No tax credits are being requested for the Charity Premises facilities.

The project consists of e residential rental housing buildings. Each building will have approximately f SRO units intended for lease to e individuals per unit. Each building will have a common space available for the use of the tenants of the buildings. Each building will have adequate kitchen and bathroom facilities for the tenants which will be used on a shared basis, and practical alternatives for meals are available.

Each building is a separate, unattached and independent structure; however, a short enclosed walkway is connected to each building at an exit point permitting an individual to access the administrative buildings of the Charity Premises without going into the weather. Each building also has independent entrances/exits as well.

The Taxpayer will lease the land (at the Charity Premises) on which the buildings will be constructed from Charity on a long-term lease to exceed g years in term. Tenants of the project may, on a voluntary basis, participate in the support services provided by Charity at the Charity Premises. The Charity Premises have a central dining facility which is also available to tenants on a voluntary basis. Adequate alternatives to obtain meals are also available in the surrounding community.

None of the services provided by Charity at the Charity

Premises are required as a condition to leasing a unit in the project. However, it is anticipated that the majority, if not all, of the tenants would elect to participate in the support services provided by Charity.

The support services provided by Charity at the Charity Premises are provided in separate buildings owned and operated by Charity at the Charity Premises. The support services will be primarily geared toward alcohol and chemical dependency rehabilitation, but will also address job training skills, personal care, and assistance in obtaining and retaining permanent housing. The support services are intended to assist individuals to remain independent and avoid placement in an institutional care facility. The Charity Premises also provide rental assistance to program participants up to the full rental charge for their respective housing units. It is anticipated that over 1 percent of the tenants of the project will be referred to the project by governmental (city and county) agencies, nonprofit organizations, private agencies, and concerned individuals unrelated to Charity. Only a small percentage of tenants will be referred directly by Charity. No units of the project will be provided for members or employees of Taxpayer or Charity, or anyone related to Taxpayer or Charity (within the meaning of section 52).

With respect to each unit of the project, each tenant will enter into a lease agreement entitling the individual to the shared use of his/her unit along with another individual. The lease term will be for at least 30 days/one month. Each unit will have lockable doors and will be independent and separate from the other units. Each tenant will be required to be ambulatory and able to care for her/himself. There is no lock-down of facilities. Each tenant will be free to come and go as he/she sees fit. A staff person will be on duty at all times to handle any emergencies and hopefully control any inappropriate activities. The project is not targeted for, and will not house, severely handicapped or chronically afflicted individuals who are in need of constant supervision or continuous medical and psychiatric attention. There will be no provision for nursing services, medical services, psychiatric services, constant care/24-hour supervision or dispensing of medical drugs as part of the project. However, for those tenants taking prescription medication, Charity will hold and monitor the dispensing of such medications as a part of the support services provided through the Charity Premises. The lease agreements will contain typical conditions and terms, the violation of which may subject the tenant to eviction; however, any action will be taken in compliance with State landlord tenant laws.

The project will be operated and leased to individuals in a manner which does not discriminate on the basis of race, color, creed, religion, sex, national origin, age, familial status, and handicap, and not discriminate on the basis of class membership or membership in a sponsoring organization. The rent charged for each unit and the income limitations applicable to tenants residing therein shall be in compliance with section 42 limitations.

Section k of the City Code provides that “every dwelling unit of one habitat room shall be occupied by a maximum of e occupants.” The Taxpayer has received a letter from the Acting Planning Director, Planning Department, for City stating that the Department has reviewed the architectural plans and drawings for the project, and that based upon a review of the plans and drawings, the project would be in compliance with the City health, safety and building codes, and would comply with the City Code, including the proposal to house e individuals in the SRO units of the project.

The Taxpayer has received a letter from the Director of Fair Housing and Equal Opportunity for the State Region, United States Department of Housing and Urban Development (HUD). Based upon the Taxpayer’s representations that the project ‘~‘ill be open to all homeless persons, regardless of whether or not they have either alcohol or chemical dependency disabilities, the Director has determined that (assuming the project otherwise is operated and leased in a manner that does not discriminate on the basis of race, color, religion, sex, national origin, age, familial status and handicap) the project’s preference for persons with alcohol or chemical dependency disabilities is not inconsistent with HUD’s housing policy implementing the Fair Housing Act.

RULINGS REQUESTED:

Taxpayer requests the following rulings:

1. For purposes of section 42(i)(3)(B)(i), the units of the project will be treated as being suitable for occupancy and used other than on a transient basis.
2. For purposes of section 42, the project will be for use by the general public.
3. For purposes of section 42, the support services provided by Charity through the Charity Premises to tenants of the project will not disqualify the project from eligibility to receive low-income housing tax credits.

LAW AND ANALYSIS:

Section 42(a) provides a tax credit for investment in low-income housing buildings placed in service after December 31, 1986. For any taxable year in a ten-year credit period, the amount of credit is equal to the applicable percentage of the qualified basis of each qualified low-income building.

Section 42(g)(1) of the Code defines the term “qualified low-income housing project” as any project for residential rental property if the project meets the requirements of subparagraphs (A) or (B), whichever the taxpayer elects. The election is irrevocable. The project meets the requirements of section 42(g)(1)(A) if 20 percent or more of the residential units in the project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income. The project meets the requirements of section 42(g)(1)(B) if 40 percent or more of the residential units in the

project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income.

Section 42(g)(2)(A) of the Code provides that a unit is rent-restricted if the gross rent (defined in section 42(g)(2)(B)) that is paid for the unit does not exceed 30 percent of the income limit that section 42(g)(1) imposes upon the occupants.

Section 42(c)(1)(A) defines the qualified basis of any qualified low-income building for any tax year as an amount equal to the applicable fraction, determined as of the close of the tax year, of the eligible basis of the building, determined under section 42(d).

Section 42(c)(1)(B) defines the applicable fraction as the smaller of the unit fraction or the floor space fraction. Section 42(c)(1)(C) defines the unit fraction as the fraction the numerator of which is the number of low-income units in the building and the denominator of which is the number of residential rental units, whether or not occupied, in the building. Section 42(c)(1)(D) defines the floor space fraction as the fraction the numerator of which is the total floor space of the low-income units in the building and the denominator of which is the total floor space of the residential rental units, whether or not occupied, in the building.

In general, under section 42(i)(3)(A), a low-income unit is any unit that is rent-restricted, as defined in section 42(g)(2), and occupied by individuals meeting the income limitation, under section 42(g)(1), applicable to the building. Under section 42(i)(3)(B), a unit is not treated as a low-income unit unless the unit is suitable for occupancy and used other than on a transient basis. Under section 42(i)(3)(B)(iv), an SRO unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.

Section 1.42-9 of the Income Tax Regulations provides that a residential rental unit in a building is not eligible for section 42 credit unless it is made available for use by the general public. A residential rental unit is for use by the general public if the unit is rented in a manner consistent with housing policy governing nondiscrimination, as evidenced by HUD rules or regulations.

Section 1.42-11 of the regulations provides that the furnishing to tenants of services other than housing (whether or not the services are significant) does not prevent a unit occupied by a tenant from qualifying as residential rental property eligible for section 42 credit. Generally, any charges to low-income tenants for services that are not optional (i.e., required as a condition of occupancy) must be included in gross rent for purposes of section 42(g). However, an exception under section 42(g)(2)(B)(iii) provides that gross rent does not include certain fees paid for supportive services provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. In the case of an SRO unit, a supportive service includes any service provided to assist tenants in locating and retaining permanent housing. Further, if continual or frequent nursing, medical, or psychiatric

services are provided, it is presumed that the services are not optional and the building is ineligible for credit, as is the case with a hospital, nursing home, lifecare facility, or intermediate care facility for the mentally and physically handicapped.

Project units are SRO units. To qualify as a low-income unit under section 42(i)(3)(B)(i), an SRO unit must be suitable for occupancy and used on a nontransient basis. Taxpayer has received a letter from the Acting Planning Director, Planning Department, for the City, stating that the project satisfies local health, safety, and building codes and complies with the City Code, including the proposal to house two individuals in the SRO units of the project. While there are no regulations under section 42(i)(3)(B)(ii), we believe the project's compliance with local health, safety, and building codes and the City Code satisfies the suitability for occupancy requirement of section 42(i)(3)(B)(i). Section 42(i)(3)(B)(iv) provides that the section 42(i)(3)(B)(i) nontransiency requirement is satisfied if an SRO unit is rented on a month-by-month basis. Taxpayer represents that each tenant will enter into a lease agreement that provides a minimum stay of one month. These leases will contain typical conditions and terms, the violation of which may subject the tenant to eviction. Any action taken under the lease agreement will be taken in compliance with State landlord tenant laws. Taxpayer's lease agreements satisfy the nontransiency requirement of section 42(i)(3)(B)(i).

Taxpayer represents that the project will be open to all homeless persons. However, a preference will be given for persons with alcohol or chemical dependency. Because the project will be open to all homeless persons, regardless of whether or not they have a disability, HUD's Director of Fair Housing and Equal Opportunity in the State Region has determined that (assuming the project otherwise is operated and leased in a manner that does not discriminate on the basis of race, color, religion, sex, national origin, age, familial status and handicap) the project's preference for persons with alcohol or chemical dependency disabilities is not inconsistent with HUD's housing policy implementing the Fair Housing Act. Consequently, project units do not violate the section 1.42-9(a) general public use requirements because they will be rented in a manner consistent with HUD housing policy governing nondiscrimination. Taxpayer also represents that no units of the project will be provided for members or employees of Taxpayer or Charity, or anyone related to Taxpayer and Charity (within the meaning of section 52). Consequently, project units do not violate the section 1.42-9(b) general public use requirements because the units are not being provided only for a member of a social organization or provided by an employer for its employees.

Taxpayer represents that the support services provided by Charity through the Charity Premises to project tenants is not a condition or requirement to renting a unit. Therefore, these services are optional and any payment for these services will not be included in gross rent for purposes of section 42(g)(2)(A). Taxpayer has represented that the buildings that will house the tenants are limited to residential rental use. There will be no provision for nursing services, medical services, psychiatric services, constant care/24-hour supervision or dispensing of medical drugs as part of the project. Accordingly, under these circumstances, section 1.42-11(b) is not applicable to project buildings.

After applying the relevant law and regulations to the facts submitted and the representations set forth above, we rule as follows:

1. For purposes of section 42(i)(3)(B)(i), the units of the project are suitable for occupancy and used other than on a transient basis.
2. Based upon Taxpayer's representation that the project will be open to all homeless people regardless of whether or not they have alcohol or chemical dependence disabilities, and assuming the project otherwise is operated and leased in a manner that does not discriminate on the basis of race, color, religion, sex, national origin, age, familial status and handicap, project units do not violate the section 1.42-9 general public use requirements because they will be rented in a manner consistent with HUD housing policy governing nondiscrimination.
3. The support services provided by Charity through the Charity Premises to tenants of the project do not disqualify project buildings from section 42 credit eligibility.

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) provides that it may not be used or cited as precedent. A copy of this letter is being sent to the District Director of the District.

Sincerely yours,

Susan Reaman
Chief, Branch 5
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosure:
6110 copy