

Private Letter Ruling 9816018

Date: January 14, 1998

Refer Reply To: CC:DOM:P&SI:5-PLR-117183-97

LEGEND:

Taxpayer = ***

General Partner = ***

Project = ***

State A = ***

City B = ***

City C = ***

Agency D = ***

Board E = ***

Limited Partner = ***

a = ***

b = ***

c = ***

d = ***

e = ***

f = ***

g = ***

h = ***

i = ***

j = ***

k = ***

l = ***

Dear ***

This letter responds to your letter of September 12, 1997, and subsequent correspondence submitted by General Partner on behalf of Taxpayer. Taxpayer is requesting a private letter ruling that the Project's tax-exempt financing will result in the Project being financed by tax-exempt bonds for purposes of section 42(h)(4) of the Internal Revenue Code. Taxpayer has made the following representations.

Taxpayer is a State A limited partnership. Taxpayer is under the audit jurisdiction of the District Director in City B. Taxpayer was organized for the purpose of acquiring, constructing, and operating the Project. Taxpayer has acquired a site just north of downtown City C on which it is constructing a new public housing units, consisting of b townhouses and garden units and c single family homes. The anticipated cost of the Project is d which was to be funded with tax-exempt bonds in the amount of e, a loan from Agency D of f, and an equity contribution of g.

Taxpayer acquired the site from Agency D pursuant to a long-term ground lease on h and on the same date purchased construction work in progress on some of the buildings that

are part of the Project. Phase I of the Project, consisting of i townhome units, was placed in service in j. It is expected that phase II of the Project consisting of the remaining units, will be placed in service in k, the taxable year succeeding j. Taxpayer will elect k as the first year of the credit period for both phase I and phase II of the Project.

Taxpayer had intended to finance substantially more than half of the construction costs of the Project with the proceeds of tax-exempt bonds that would be taken into account under section 146 of the Code. As such, Taxpayer intended to rely on section 42(h)(4), and has not and will not seek an allocation of “housing credit dollar amount” under section 42(h)(1). A bond inducement resolution from Board E was obtained on l. The original intention was that the bonds would be issued in early j.

However, all of State A's volume cap available for j for multi-family housing bonds has been allocated, and no more bonds will be available for multi-family housing in State A until k. Taxpayer expects to be “grandfathered” with respect to an allocation of k bond cap, and now plans to issue bonds early in k.

Construction costs are currently being funded by loans from Agency D, which in turn are being funded by Hope VI funds provided to Agency D by the Department of Housing and Urban Development. It was expected that bond proceeds would pay off the existing debt to Agency D and would fund additional construction costs. The remaining costs of the Project were to be funded by equity to be contributed by Limited Partner, which would in turn be funded by the issuance of limited partnership interests by Limited Partner to corporate investors.

In light of the unavailability of bonds in j, Taxpayer now proposes to continue construction of the Project financed by additional borrowings from Agency D (which will in turn be funded by additional draws on the Hope VI funds) and to issue tax-exempt bonds in early k to repay the Agency D loan at that time. These tax-exempt bonds will be outstanding at the end of k.

Taxpayer represents that the bond inducement resolution adopted by Board E on l evidences an intent and expectation that tax- exempt bond proceeds will be used to reimburse “advances” made for acquisition and construction expenditures with respect to the Project and that the Agency D loan is an “advance” that will be reimbursed with bond proceeds within the contemplation of the bond inducement resolution. Taxpayer further represents that the bond inducement resolution states the maximum principal amount of tax-exempt bonds to be issued with respect to the Project (e) and describes the Project in its entirety with respect to which construction and acquisition costs have been, or will be, incurred.

DISCUSSION

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) of the Code 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 a tax credit for investment in qualified 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(h)(1)(A) of the Code provides that the amount of credit determined under section 42 for any taxable year with respect to any building shall not exceed the housing credit dollar amount allocated to such building under section 42(h).

Section 42(h)(1)(B) of the Code provides that an allocation generally shall be taken into account under section 42(h)(1)(A) only if it is made not later than the close of the calendar year in which the building is placed in service.

Section 42(h)(3)(A) of the Code provides that the aggregate housing credit dollar amount which a housing credit agency may allocate for any calendar year is the portion of the state housing credit ceiling allocated under section 42(h)(3)(A) for such calendar year to such agency.

Section 42(h)(4)(A) of the Code provides that section 42(h)(1) does not apply to any portion of the credit otherwise allowable under section 42(a) which is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under section 103 if —

(i) such obligation is taken into account under section 146, and

(ii) principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing.

Section 42(h)(4)(B) of the Code provides that, if 50 percent or more of the aggregate basis of any building and the land on which the building is located is financed with such tax-exempt bonds, section 42(h)(1) does not apply to any portion of the low-income housing credit allowable under section 42(a) with respect to such building.

In the present case, the first year of the credit period for both phase I and II of the Project is the taxable year of k. Further, tax-exempt bonds subject to the volume cap (section 146 of the Code) will be issued in k and will be outstanding at the end of k. The proceeds of such bonds will be expended by the end of k to repay the outstanding Agency D loan and to fund remaining construction expenditures for the Project. Moreover, the bond inducement resolution adopted by Board E on l evidences the intent of the issuer to reimburse the original Agency D loan, states the maximum principal amount of the tax-exempt obligation expected to be issued for the Project, and describes the Project in its

entirety for which construction and acquisition costs have been, or will be, incurred. Accordingly, these tax-exempt bonds will be treated as financing the Project for purposes of section 42(h)(4).

Based solely on the representations and relevant law as set forth above, we conclude that the Project's tax-exempt financing will result in the eligible basis of the Project being financed by tax-exempt bonds within the meaning of section 42(h)(4) of the Code.

No opinion is expressed or implied regarding the application of any other provisions of the Code or regulations, including sections 103 and 141-150. Specifically, we express no opinion on whether the Project qualifies for the low-income housing tax credit under section 42, the validity of costs included in the Project's eligible basis, or whether and when the "50-percent aggregate basis" requirement in section 42(h)(4)(B) is met.

Under the power of attorney on file, we are sending a copy of this letter ruling to Taxpayer.

This letter 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.

Sincerely,

Kathleen Reed
Assistant to the Branch Chief
Branch 5
Office of the Assistant
Chief Counsel
(Passthroughs and Special Industries)
Enclosures (2):
copy of this letter
copy for section 6110 purposes