Office of Chief Counsel
Internal Revenue Service
memorandum

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subject: Units for Resident Managers or Maintenance Personnel in a Building Eligible for Low-Income Housing Credit

This Chief Counsel Advice responds to your request for assistance. In accordance with § 6110, this advice may not be used or cited as precedent.

ISSUES

1) If resident managers or maintenance personnel pay rent, utilities, or both for units in a qualified low-income building under § 42(c)(2) of the Internal Revenue Code, are the units residential rental units and not facilities reasonably required for the project under § 1.103-8(b)(4)(iii) of the Income Tax Regulations?

2) If resident managers or maintenance personnel pay rent, utilities, or both for units in a qualified low-income building under § 42(c)(2), are the units residential rental units for purposes of general-public-use requirement of § 1.42-9?

CONCLUSIONS

1) No. Charging resident managers or maintenance personnel rents, utilities, or both for units in a qualified low-income building does not make the units residential rental units and not facilities reasonably required for the project under § 1.103-8(b)(4)(iii).

2) No. The general-public-use requirement of § 1.42-9 does not apply in the case of units for resident managers or maintenance personnel in a qualified low-income building because the units are not residential rental units but facilities reasonably required for the project.

LAW AND ANALYSIS

Section 42(a) provides that the amount of the low-income housing credit determined for any tax year in the credit period is an amount equal to the applicable percentage of the qualified basis of each qualified low-income building.

Section 42(c)(1)(A) defines the qualified basis of any qualified low-income building for any taxable year as an amount equal to the applicable fraction, determined as of the close of such taxable year, of the eligible basis of the building, determined under § 42(d)(5).

Section 42(c)(2) provides that the term "qualified low-income building" means any building which is a part of a qualified low-income housing project at all times during the compliance period with respect to such building, and to which the amendments made by § 201(a) of the Tax Reform Act of 1986 apply.

The legislative history of § 42 provides that, for purposes of the low-income housing credit, the term residential rental property has the same meaning as residential rental property within § 103. Residential rental property thus includes residential rental units, facilities for use by the tenants, and other facilities reasonably required by the project. 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-89 (1986), 1986-3 (Vol. 4) C.B. 89.

Section 1.42-9(a) provides that, if a residential rental unit in a building is not for use by the general public, the unit is not eligible for a § 42 credit. Section 1.42-9(b) provides that, if a residential rental unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for the use by the general public and is not eligible for credit under § 42.

Section 103(a) provides that, except as provided in § 103(b), gross income does not include interest on any State or local bond. Section 103(b) provides that § 103(a) shall not apply to any private activity bond which is not a qualified bond (within the meaning of § 141).

Section 141(e) provides in part that the term "qualified bond" means any private activity bond if such bond is an exempt facility bond.

Section 142(a) provides in part that the term "exempt facility bond" means 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) provides that the term "qualified residential rental project" means any project for residential rental property if, at all times during the qualified project period, such project meets the requirements of certain set-aside tests.

Section 1.103-8(a)(3) provides that an exempt facility includes any land, building, or other property functionally related and subordinate to such facility. Property is not functionally related and subordinate to a facility if it is not of a character and size commensurate with the character and size of such facility.

Under § 1.103-8(b)(4), facilities that are functionally related and subordinate to residential rental units are considered residential rental property. Section 1.103-8(b)(4)(iii) provides that, under § 1.103-8(a)(3), facilities that are functionally related and subordinate to residential rental projects include facilities for use by the tenants, for example, swimming pools, other recreational facilities, parking areas, and other facilities which are reasonably required for the project, for example, heating and cooling equipment, trash disposal equipment or units for resident managers or maintenance personnel.

Rev. Rul. 92-61, 1992-2 C.B. 7, provides that, under § 1.103-8(b)(4), units for resident managers or maintenance personnel are not classified as residential rental units, but rather as facilities reasonably required by a project that are functionally related and subordinate to residential rental units.

Rev. Rul. 2004-82, Q&A-1, 2004-2 C.B. 350, provides that, under § 1.103-8(b)(4)(iii), units for resident managers or maintenance personnel are residential rental property because they are functionally related and subordinate to a residential rental projects, not because they are residential rental units. Similarly, a unit occupied by a full-time security officer is not a residential rental unit.

Issue 1

Under § 1.103-8(b)(4)(iii), units for resident managers or maintenance personnel are an example of facilities that are reasonably required for the project. In any particular case, however, whether such a unit is reasonably required for the project will turn on the facts and circumstances of that case.

Whether or not the owner of the project charges rents, utilities, or both for the units are not relevant in the treatment of the units as facilities that are reasonably required for the project. As such, the fact that the owner of a qualified low-income building charges rents, utilities, or both for units for resident managers or maintenance personnel is not relevant in the treatment of such units as facilities reasonably required for the project. In other words, charging rents, utilities, or both for units for resident managers or maintenance personnel in a qualified low-income building does not make such units residential rental units and not facilities reasonably required for the project. The character and size of the project are, among other things, relevant in determining whether any property, including an employee-occupied unit, is functionally related and subordinate to the project, as indicated by § 1.103-8(a)(3).

Issue 2

Under § 1.42-9, residential rental units in a qualified low-income building must be for use by the general public. Under § 1.103-8(b)(4)(iii), units for resident managers or maintenance personnel in a qualified low-income building are not residential rental units but facilities reasonably required for the project. Therefore, the general-public-use requirement of § 1.42-9 does not apply in the case of units for resident managers or maintenance personnel in a qualified low-income building.

In accordance with § 6110(k)(3), this document may not be used or cited as precedent. Please call Jian H. Grant at (202) 317-4137 if you have any further questions about this matter.