Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200605004**
Release Date: 2/3/2006
Index Number: 42.05-03

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B05 – PLR-141478-05

Date:
October 25, 2005

LEGEND

Taxpayer =

City =

State 1 =

Project Name =

Project Location =

h

a =

b =

c =

d =

e =

General Partner	=	
f	=	
Individual	=	
g	=	
Church	=	
Limited Partner 1	=	
Limited Partner 2	=	
State 2	=	
Date 1	=	
Year 1	=	
Year 2	=	
Date 2	=	
Agency	=	
i	=	
Date 3	=	
Year 3	=	
k	=	
l	=	
m	=	
Date 4	=	

Dear :

This letter responds to Taxpayer's letter dated July 22, 2005, and subsequent information received from Taxpayer's authorized representative, requesting a ruling that rehabilitation expenditures that are treated as a separate new building under § 42(e) of the Internal Revenue Code (the Code) are treated as placed in service at the close of any 24-month period over which such expenditures are aggregated for purposes of § 42(e)(3)(A)(ii), notwithstanding that such expenditures are considered placed in service for purposes of the rehabilitation tax credit under § 47 prior to the close of such 24-month period. The Internal Revenue Service Office that will have examination jurisdiction over Taxpayer is located in City.

The relevant facts as represented by the Taxpayer are set forth below.

FACTS

Taxpayer is a State 1 limited partnership organized to purchase, rehabilitate and operate a single structure consisting of h condominiums and known as Project, located at Project Location. a of the condominiums contain a total of b residential apartments for families; c condominium consists of d square feet of commercial space; and c condominium consists of a e-seat auditorium.

The general partner of Taxpayer is General Partner, a State 1 limited liability company. General Partner is owned f percent by Individual and g percent by Church, a State 1 nonprofit corporation. Taxpayer's limited partners are Limited Partner 1 and Limited Partner 2. Limited Partner 1 and Limited Partner 2 are State 2 limited partnerships.

On Date 1, Taxpayer acquired land and a vacant structure at Project Location. Taxpayer rehabilitated the existing structure, and presently operates a portion of the existing structure and expansion thereof as Project, an affordable housing project, which contains a total of b residential units in a condominium buildings. All of the b units in Project are, or will be, rented to low-income tenants. Taxpayer represents that the rehabilitation of the existing building qualifies for the tax credit under § 47 for the rehabilitation of certified historic structures (Historic Credit) and will otherwise qualify for the § 42 low-income housing credit.

Taxpayer began making rehabilitation expenditures in Year 1. Taxpayer intends to designate a 24-month period ending in Year 2 for aggregating rehabilitation expenditures pursuant to § 42(e)(3)(A)(ii) and expects to meet the minimum substantial rehabilitation requirement set forth therein within the 24-month period ending in Year 2. Accordingly, the rehabilitation and expansion of each of the a residential condominium buildings in Project is expected to qualify as a separate new building under § 42(e).

On Date 2, Taxpayer received from the Agency, a carryover allocation of Year 1 low-income housing tax credits under § 42(h)(1)(E) in the amount of $i. On Date 3,

Taxpayer received from Agency a second carryover allocation of Year 3 housing credits in the amount of $k.

Project is listed on the National Register of Historic Places maintained by the Department of the Interior pursuant to the National Historic Preservation Act of 1966. Taxpayer represents it incurred "qualified rehabilitation expenditures" as defined in § 47(c)(2) for Project in the amount of approximately $l during Year 1 and Year 3. Project qualified for Historic Credits in the amount of approximately $m. In Year 3 Taxpayer completed the rehabilitation of Project in accordance with the description given in the Historic Preservation Certification Application. During Year 3 Taxpayer obtained certificates of occupancy for the b dwelling units in Project and made those units available for rent. Accordingly, Taxpayer represents that, for purposes of the Historic Credit, the qualified rehabilitation expenditures of the b dwelling units in Project was placed in service in Year 3. In Date 4, Taxpayer obtained a determination from the National Park Service of the U.S. Department of the Interior that the completed rehabilitation of Project meets the Secretary of the Interior's "Standards for Rehabilitation."

Taxpayer expects to file Form 1065, Partnership Return of Income, for taxable year Year 3, in which it expects to report the Historic Credit and cost recovery deductions relating to the rehabilitation expenditures on Project incurred during or prior to Year 3.

RULING REQUESTED

Taxpayer requests the Service to rule that, for purposes of the § 42 credit, rehabilitation expenditures that are treated as a separate new building (within the meaning of § 42(e)) may be treated as placed in service at the close of the 24-month period ending in Year 2, notwithstanding that some or all of such expenditures are considered placed in service in Year 3 for purposes of the Historic Credit.

LAW AND ANALYSIS:

Section 38(a) 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 § 42(a).

Section 42(a) provides for the determination of low-income housing tax credits if certain conditions are met. One condition, found in § 42(h)(1)(B), is that a building receive an allocation of credit by the close of the calendar year in which the building is placed in service.

Under § 42(b)(2)(B)(i), buildings that otherwise meet the requirements of § 42 qualify for a 70-percent present value credit if they are "new buildings" that are not federally subsidized for the taxable year.

Section 42(e)(1) provides that rehabilitation expenditures (as defined under § 42(e)(2)) paid or incurred by a taxpayer with respect to any building will be treated "as a separate new building." Section 42(e)(3)(A) provides that § 42(e)(1) only applies to rehabilitation expenditures with respect to any building if the amount of the rehabilitation expenditure incurred during any 24-month period equals the greater of $3,000 per low-income unit or 10% of the adjusted basis of the building at the commencement of the 24-month period. Section 42(e)(4)(A) provides that for purposes of applying § 42 with respect to expenditures that are treated as a separate building by reason of § 42(e), such rehabilitation expenditures shall be treated as placed in service at the close of the 24-month period referred to in § 42(e)(3)(A). Because the 24-month period referred to in § 42(e)(3)(A) is "any" 24-month period, the determination of when that period ends (and thus, when the rehabilitation expenditures are placed in service) is within the discretion of the taxpayer.

Notice 88-116, 1988-2 C.B. 449, provides that, for purposes of § 42, the term "placed in service" has two definitions, one for buildings and one for rehabilitation expenditures that are treated as a separate new building. Under § 42(e)(4)(A) and Notice 88-116, the placed in service date for rehabilitation expenses treated as a separate new building is the close of any 24-month period over which such expenditures are aggregated, regardless of whether tenants occupy the building during the rehabilitation period. Notice 88-116 further provides that the placed in service date for new or existing buildings is the date on which the building is ready and available for its specifically assigned function, thus clearly distinguishing the placed in service date of a new or existing building from that of rehabilitation expenses treated as a separate new building.

Section 47(a) provides, in part, that the rehabilitation credit for any taxable year is 20 percent of the qualified rehabilitation expenditures with respect to any certified historic structure.

Section 47(b) provides that qualified rehabilitation expenditures with respect to any qualified rehabilitated building shall be taken into account for the taxable year in which the qualified rehabilitated building is placed in service.

Section 1.46-3(d)(1) of the Income Tax Regulations provides that property will be considered placed in service in the earlier of the following taxable years: (i) the taxable year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to such property begins; or (ii) the taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function, whether in a trade or business, in the production of income, in a tax-exempt activity, or in a personal activity. Section 1.48-12(f)(2)(i) of the regulations provides that,

generally, the credit for qualified rehabilitation expenditures is allowed in the taxable year in which the property attributable to the expenditures is placed in service, provided the building is a qualified rehabilitated building for the taxable year. Thus, for purposes of the Historic Credit, property attributable to qualified rehabilitation expenditures will not be treated as placed in service until the building with respect to which the expenditures are made meets the definition of a qualified rehabilitated building (as defined in § 47(c)(1) and section 1.48-12(b) of the regulations) for the taxable year. Accordingly, in the first taxable year for which the building becomes a qualified rehabilitated building, the qualified rehabilitation expenditures shall be considered to be placed in service, if such property was considered placed in service under § 46(c) and section 1.46-3(d)(1) of the regulations without regard to section 1.48-12(f)(2)(i) in that taxable year or a prior taxable year.

In the present case, Taxpayer represents that it intends to designate a 24-month period ending in Year 2 for aggregating rehabilitation expenditures pursuant to § 42(e)(3)(A)(ii) for each of the a residential condominium buildings (including expansions thereof) in Project. Taxpayer further represents that it expects to meet the minimum substantial rehabilitation requirement of § 42(e)(3)(A)(ii) within this 24-month period, thereby qualifying the rehabilitation expenditures for each of the a residential condominium buildings (including expansions thereof) as a separate new building under § 42(e). As determined under § 42(e)(4)(A) and Notice 88-116, the placed in service date for rehabilitation expenditures treated as a separate new building is at the discretion of the taxpayer and is distinguishable from that of a new or existing building (for § 42 purposes) and from the placed in service date of qualified rehabilitation expenditures for purposes of the Historic Credit under § 47.

Accordingly, based solely on the taxpayer's representations of fact and relevant law as set forth above we conclude that for purposes of the § 42 credit, rehabilitation expenditures that are treated as a separate new building under § 42(e) may be treated by Taxpayer as placed in service at the close of the 24-month period ending in Year 2, notwithstanding that some or all of such expenditures are considered placed in service in Year 3 for Historic Credit purposes.

We express no opinion on whether any other requirement of § 42 has been met, particularly whether Taxpayer meets the minimum expenditure test of § 42(e)(3). Also, we express no opinion on whether any of Taxpayer's expenditures are qualified rehabilitation expenditures for purposes of § 47. Because the determination of the placed in service date is based on a fact and circumstances determination, we express no opinion on when property attributable to any expenditure of Taxpayer is placed in service for purposes of the Historic Credit under § 47.

In accordance with the power of attorney, we are sending a copy of this letter ruling to the Taxpayer's authorized representatives.

This ruling is directed only to the Taxpayer which requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this letter should be filed with the federal income tax return for Taxpayer and its partners for the first taxable year in which the low-income housing credit for the project buildings are claimed.

Sincerely yours,

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

Enclosure:
6110 copy

cc: -