

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
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Date: June 10, 2008

LEGEND

Taxpayer =

Project =

City 1 =

State =

Seller =

Address =

a =

b =

Year 1 =

Year 2 =

c =

d =

e =

Dear :

This letter responds to Taxpayer's letter dated May 20, 2008, and subsequent correspondence from Taxpayer's authorized representative, requesting a ruling that will waive for Project buildings the 10-year holding period for existing buildings (the "10-Year Rule") under § 42(d)(2)(B)(ii) of the Internal Revenue Code, pursuant to the authority for the acquisition of certain federally-assisted buildings provided in § 42(d)(6)(A).

The relevant facts as represented by Taxpayer in these submissions are set forth below.

FACTS

Taxpayer is a State limited partnership formed to acquire, rehabilitate, develop, own and operate Project. Project is a b-unit multi-building residential rental project located at Address in City 1. On a, Taxpayer entered into a binding contract to purchase Project. Taxpayer intends to use bond proceeds to rehabilitate Project buildings and qualify Project buildings for both the acquisition and rehabilitation credit under § 42 of the Code.

Project was originally constructed and placed in service by Seller in Year 1. In Year 2, as a result of a tender and merger of limited partnership interests in Seller, there was a 100-percent change of ownership in Seller that resulted in a new placed in service date for Project buildings for federal income tax purposes. Since the interval between the date Project buildings were last placed in service and the contemplated date of acquiring Project buildings in e is less than 10 years, absent an exception, Taxpayer will fail to meet the 10-Year Rule for Project buildings.

Project is subject to a mortgage loan insured by the U.S. Department of Housing and Urban Development (HUD) under Section 220 of the National Housing Act, as amended (the "Act"), through Section 223(a)(7) of the Act. Project is designated as FHA project number c. Project also receives substantial federal rental assistance under Section 8 of the United States Housing Act of 1937. In a letter dated d, HUD (1) stated that Project buildings are federally-assisted buildings as defined under § 1.42-2

of the Income Tax Regulations, (2) identified the source of Project's federal financing, (3) stated that a waiver of the 10-year holding requirement under § 42(d)(6) is necessary to avert Federal mortgage funds being at risk, and (4) has taken a "Federal agency action" as described in § 1.42-2(c)(3)(ii)(A) of the Income Tax Regulations.

Taxpayer makes the following representations concerning Project buildings:

(1) Taxpayer's acquisition of Project buildings will be by purchase within the meaning of § 179(d)(2), as applicable under § 42(d)(2)(D)(iii)(I);

(2) To the best of Taxpayer's knowledge, there have been no nonqualified substantial improvements to Project buildings since they were last placed in service;

(3) As of the date of Taxpayer's application, Project buildings are federally - assisted buildings as defined in § 42(d)(6)(B) and § 1.42-2(c)(1) of the Income Tax Regulations;

(4) Project buildings were not previously placed in service by Taxpayer, or by a person who was a related person (as defined in § 42(d)(2)(D)(iii)(II)) to Taxpayer at the time Project buildings were last placed in service;

(5) To the best of Taxpayer's knowledge no prior owner of Project buildings were allowed a § 42 low-income housing tax credit for Project buildings; and

(6) To the best of Taxpayer's knowledge, federal mortgage funds for Project buildings are at risk within the meaning of § 1.42-2(c)(2) of the Income Tax Regulations.

RULING REQUESTED

Taxpayer requests that the Service waive, for the Project buildings, the 10-Year Rule of § 42(d)(2)(B)(ii) pursuant to the authority granted by the Secretary of the Treasury under § 42(d)(6)(A)(ii) of the Code and § 1.42-2 of the Income Tax Regulations.

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).

For an existing building to qualify for the 30-percent present value housing tax credit, § 42(d)(2)(B)(ii) requires there be a period of at least 10 years between the date

of the building's acquisition by the taxpayer and the later of:

- (1) The date the building was last placed in service, or
- (2) The date of the most recent nonqualified substantial improvement of the building.

Section 42(d)(6)(A) provides an exception to the 10-year holding period requirement of § 42(d)(2)(B)(ii). It states that a waiver may be granted for a federally-assisted building if the Secretary determines that the waiver is necessary –

(i) to avert an assignment of the mortgage secured by property in the project (of which such building is a part) to the Department of Housing and Urban Development or the Farmers Home Administration (now Rural Housing Service, USDA-RHS), or

(ii) to avert a claim against a Federal mortgage insurance fund (or such Department or Administration) with respect to a mortgage which is so secured.

Section 42(d)(6)(B) defines the term "federally-assisted building" as any building that is substantially assisted, financed, or operated under (i) section 8 of the United States Housing Act of 1937, (ii) section 221(d)(3) or 236 of the National Housing Act, or (iii) section 515 of the Housing Act of 1949, as such Acts are in effect on the date of enactment of the Tax Reform Act of 1986 (October 22, 1986).

Section 1.42-2 contains requirements that must be satisfied before the Secretary will grant the waiver referred to in § 42(d)(6). Taxpayer's representations, including a written representation dated from HUD, indicate that these requirements have been satisfied.

Based solely upon the above facts, Taxpayer's representations, and the representations from HUD, we have determined that Project buildings are federally-assisted within the meaning of § 42(d)(6)(B), and that federal funds are at risk under § 42(d)(6)(A)(ii) and § 1.42-2(c)(2). Therefore, we rule as follows:

The 10-Year Rule of § 42(d)(2)(B)(ii) is waived for Taxpayer's acquisition of Project buildings.

No opinion is expressed or implied regarding the application of any other provision in the Code or regulations. Specifically, no opinion is expressed or implied regarding whether Taxpayer's costs of acquisition and rehabilitation of Project buildings will otherwise qualify for the low-income housing credit under § 42.

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 Project buildings are claimed.

In accordance with the power of attorney on file with the ruling request, a copy of this letter is being sent to Taxpayer's authorized representative.

Sincerely,

/S/ Christopher J. Wilson

Christopher J. Wilson
Senior Counsel, Branch 5
(Passthroughs & Special Industries)

Enclosures (2): Copy of the letter
Copy for § 6110 purposes