

Internal Revenue Service

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:TEGE:EOEG:TEB-PLR-105129-00
Date:
June 28, 2000

LEGEND:

X =

Y =

Z =

State =

Bonds =

Facility =

s =

t =

Dear Sir or Madam:

This in response to your request for a private letter ruling that the Facility will be a qualified residential rental project for purposes of § 142(d).

FACTS:

X is a body politic and corporate and an instrumentality of the State. X was created by State law for the purposes, among others, of financing housing production and housing improvement. To further this purposes, X issues bonds and makes loans for capital projects and other purposes. X issued the Bonds and loaned a portion of the Bond proceeds (s dollars) to Y to construct an assisted living facility (the "Facility") that meets the requirements of § 501(c)(3) and § 145 of the Internal Revenue Code. Y is a nonprofit corporation under § 501(c)(3) organized and existing in the State. The Facility is an assisted living community with t housing units that are similarly constructed and intended for non-transient, senior adults who may need help with the activities of daily living. The Facility's housing units will be open to members of the general public.

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Y proposes to sell the Facility to Z, a State limited liability company. To maintain the tax-exempt status of the Bonds, X, Y, and Z are, simultaneously with the submission of this ruling request, taking remedial actions as provided for by § 1.141-12 and § 1.145-2 of the Income Tax Regulations, and by Rev. Proc. 97-15, 1997-1 C.B. 635, to change the use of the Facility from one qualifying as an exempt § 501(c)(3) facility described in § 145, to a facility that qualifies as a qualified residential rental project under § 142(d).

Following the sale, throughout the Qualified Project Period¹ at least 20% of the housing units in Facility will be leased to residents whose income is 50% or less of the area median gross income within the meaning of § 142(d). The determination of whether the income of a resident of a unit in Facility exceeds the required income limit will be made at least annually on the basis of the current income of the resident, as required by § 142(d)(3). An annual certification as to whether the Facility continues to meet the requirements of § 142(d) will be submitted to the Secretary of the Treasury (at such time and in such manner as the Secretary prescribes).

Following the sale, services will be made available to each resident in the Facility that include: daily meals (three per day), daily living activity assistance, emotional support assistance, pre-packaged medication intake assistance, medication record maintenance, housekeeping; health promotion (including exercise programs); and transportation scheduling.

The Facility staff will consist of home health aides, certified nurses aides, licensed practical nurses, and registered nurses. Two certified nurses aides or home health aides will be on staff at the Facility 24 hours per day, 7 days a week. A licensed practical nurse and a registered nurse will be on staff at the Facility 8 hours per day, 7 days a week during daytime hours.

Certified nurses aides and home health aides, under the supervision of the registered nurse, will provide services that include health monitoring and assistance with daily living activities. These services include the following: emotional support assistance, equipment assistance (such as changing colostomy apparatus or helping with portable oxygen tanks), vital signs collection (including temperature, pulse, respiration and blood pressure), physical assessments (including weight measurements and blood glucose monitoring), and other assistance as needed (including helping with

¹ The period beginning when Z acquires the facility and ending on the latest of (1) the date which is 15 years after the date of which 50% of the housing units in Facility are occupied; (2) the first day on which no tax-exempt private activity bond issued with respect to the Facility is outstanding, or (3) the date on which any assistance provided with respect to the Facility under Section 8 of the United States Housing Act of 1937, as amended terminates.

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meal intake or with baths).

The licensed practical nurses and the registered nurses will provide services that include additional assistance with daily living needs, record keeping, first aid treatment, health monitoring, and medication administration. The registered nurse will be specifically responsible for training, staff supervision, Facility policies and procedures, medical appointment scheduling and general health assessment at admission and every six months thereafter. If a tenant's physical condition is such that continuous (24 hour) and permanent nursing care is required, the tenant will be required to move from the Facility. State law requires that a registered nurse be available by telephone or pager at all time and that periodic health assessments be performed by a registered nurse.

LAW:

Under the general rule of § 103(a), gross income does not include interest on any state or local Bond. Section 103(b)(1), however, provides that the exclusion does not apply to any private activity bond unless it is a qualified bond under § 141(e). Among the types of qualified bonds are exempt facility bonds and qualified § 501(c)(3) bonds. Section 142(a)(7) describes an exempt facility bond as any bond issued as part of an issue of bonds if 95 percent or more of the net proceeds of the issue are to be used to provide qualified residential rental projects.

Section 142(d) defines a qualified residential rental project as a project for residential rental property that houses occupants who meet one of the alternative income tests at all times throughout a qualified project period. Income Tax Regulations have not been promulgated under § 142(d). Nevertheless, regulations promulgated under § 103(b)(4)(A) of the Internal Revenue Code of 1954, the predecessor to § 142(d), continue to apply to residential rental property except as otherwise modified by the 1986 Act and subsequent law.² Under § 1.103-8(b)(4), a residential rental project is residential rental property that meets certain requirements including occupancy requirements by low-income tenants during the period when the units must be continually rented or available for rental. Residential rental property is a building containing one or more similarly constructed units that are available to members of the general public and used on other than a transient basis. The regulations also provide that hotels, motels, dormitories, fraternity and sorority houses, rooming houses,

² The Tax Reform Act of 1986, 1986-3 (Vol. 1) C.B. 519-575 (the "1986 Act") reorganized § 103 and § 103A of the Internal Revenue Code of 1954 Code into § 103 and §§ 141 through 150 of the Internal Revenue Code of 1986. Congress intended that to the extent not amended by the 1986 Act, all principles of pre-1986 Act law would continue to apply to the reorganized provisions. H.R. Conf. Rep. No.99-84, at II-686 (1986), 1986-3 (Vol. 4) C.B. 686 (Conference Report).

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hospitals, nursing homes, sanitariums, rest homes, and trailer parks and courts for use on a transient basis are not residential projects.

Section 1.103-8(b)(8) defines a “unit” as any accommodation containing separate and complete facilities for living, sleeping, eating, cooking, and sanitation. The regulations note that an example of a unit would be a separate and distinct apartment containing a living area, a sleeping area, bathing and sanitation facilities, and cooking facilities equipped with a cooking range, refrigerator, and sink.

Revenue Ruling 98-47, 1998-2 C.B. 397, provides guidance on whether facilities offering non-housing services for the residents of the facility will cause the facility to be other than residential rental property. For purposes of § 142(d) and § 145(d), if the facility makes available continual or frequent nursing, medical, or psychiatric services it will not be residential rental housing under § 142(d) and § 145(d). The focus of these sections, their legislative histories, and the applicable regulations thereunder, is whether the facilities are, in substance, residences or health care facilities. Therefore, the nature and degree of the service provided by the facility controls.

Rev. Rul. 98-47 describes Building Y as having similarly constructed housing units with separate and complete facilities for living, sleeping, eating, cooking, bathing and sanitation. The housing units are available on a non-transient basis to members of the public. Services provided in Building Y for its residents include: assistance by medication management technicians in medication management and intake; maintenance of detailed medication records; consultation with a nurse as needed about health concerns and medication plans; assistance by non-medically certified aides each day during waking hours in activities of daily living that include getting in and out of bed and chairs, walking, using the toilet, dressing, eating, and bathing; and routine checks by staff members to insure the residents general well-being. Some residents of the facility have incapacitating infirmities that require continual assistance, but do not require continual or frequent nursing, medical, or psychiatric services. Rev. Rul. 98-47 concludes that Building Y is residential rental property for purposes of § 142(d).

In this case, the nursing services provided in Facility are different in some respects than those described in Rev. Rul. 98-47. Nevertheless, they are not provided to the tenants on a continuing or frequent basis as in a nursing home. For example, a tenant that requires 24-hour nursing care is required to move to another facility.

CONCLUSION:

Based on the facts and representations submitted, we conclude that the Facility will be a qualified residential rental project for purposes of § 142(d).

Except as specifically ruled above, no opinion is expressed concerning this transaction under any other provision of the Code or regulations thereunder.

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Specifically, no opinion is expressed concerning whether interest on the Bonds is, or after the sale of the facility to Z will be, excludable from gross income under § 103(a). This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,
Assistant Chief Counsel
(Exempt Organizations/Employment
Tax/Government Entities)

By: Timothy L. Jones
Assistant to the Chief
Tax Exempt Bonds Branch

Enclosure: Copy for § 6110 purposes