Internal Revenue Service

Index No.: 42.04-02
Number: **200003037**
Release Date: 1/21/2000

Department of the Treasury

Washington, D.C. 20044

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:5 — PLR-108139-99
Date:
October 26, 1999

Legend:

Taxpayer =

District =

State =

Project =

Partnership =

County 1 =

County 2 =

Company A =

Company B =

Buyer =

a =

b =

c =

d =

e =

f =

g =

h =

i =

Dear :

This letter responds to your letter dated April 20, 1999, and subsequent correspondence, submitted on behalf of Taxpayer, requesting a private letter ruling under § 42(d)(2)(D)(ii)(IV) of the Internal Revenue Code to permit an exception to the 10-year holding period requirement under § 42(d)(2)(B)(ii).

Taxpayer represents that the facts are as follows:

FACTS:

Taxpayer is a calendar year taxpayer that uses the accrual method of accounting. The District Office of the Internal Revenue Service that has examination jurisdiction over Taxpayer is District.

Taxpayer is a State limited liability company that was formed to operate a low-income housing project known as the Project. Taxpayer intends to qualify for § 42 low-income housing tax credits with respect to the acquisition and rehabilitation of the Project.

Partnership, a State limited partnership, was the prior owner of the Project pursuant to a leasehold interest in a parcels of land located in County 1 and County 2. The Project was placed in service by Partnership on b. Company A acquired the bond and loan documents on the Project on i.

Partnership and Company A entered into negotiations whereby Partnership agreed to an uncontested foreclosure of the Project pursuant to a purchase-money security interest. The date of the foreclosure sale was c.

Company B is an affiliate of Company A which holds title to any real estate collateral which Company A acquires (whether by foreclosure or deed in lieu thereof) in connection with any loan assets held by Company A. After Company A successfully "bid-in" the Project at the foreclosure sale on c, Company A assigned its successful

foreclosure bid to Company B. Pursuant to State law, the foreclosure process became final on e, and Company B placed the Project in service on f.

As of d, Buyer, Taxpayer's managing member, entered into an agreement with Company A and Company B for the sale of the Project to Taxpayer. On g, Buyer entered into an amendment to the agreement. The Closing Date for the purchase of the Project was h, when the Project was resold to Taxpayer.

Taxpayer has made the following additional representations and certification with respect to the Project:

(1) The acquisition of the Project by Taxpayer was by purchase (as defined in § 179(d)(2), as applicable under § 42(d)(2)(D)(iii)(I)).

(2) The Project was 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)) with respect to Taxpayer as of the time the Project was last placed in service.

(3) To the best of the knowledge of Taxpayer and its representatives, there have been no nonqualified substantial improvements to the Project since it was last placed in service.

(4) To the best of the knowledge of Taxpayer and its representatives, no prior owner of the Project was allowed a low-income housing tax credit under § 42 for the Project.

(5) All terms and conditions of § 42 and related sections of the Code will be met, including substantial rehabilitation of a minimum of $3,000 per apartment unit, including the 10-year holding period requirement provided by § 42(d)(2)(B)(ii) provided the Service concurs that the exception provided in § 42(d)(2)(D)(ii)(IV) applies.

RULING REQUESTED:

Taxpayer requests a ruling that the requirements of § 42(d)(2)(D)(ii)(IV) are satisfied and, therefore, the date Company B placed the Project in service after acquiring it by foreclosure does not constitute a new placed in service date for purposes of § 42(d)(2)(B)(ii).

LAW AND ANALYSIS:

For an existing building to qualify for the 30-percent present value low-income housing tax credit, § 42(d)(2)(B)(ii) requires that 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)(2)(D)(ii) provides special rules for certain transfers for purposes of determining under § 42(d)(2)(B)(ii) when a building was last placed in service. Pursuant to § 42(d)(2)(D)(ii)(IV), there shall not be taken into account any placement in service by any person who acquired such building by foreclosure (or by instrument in lieu of foreclosure) of any purchase-money security interest held by such person if the requirements of § 42(d)(2)(B)(ii) are met with respect to the placement in service by such person and such building is resold within 12 months after the date such building is placed in service by such person after such foreclosure.

In the present case, Taxpayer represents that, pursuant to State law, there was a foreclosure of Company B's purchase-money security interest in the Project. Taxpayer further represents that Company B placed the Project in service on f. Taxpayer also represents that the Project was last placed in service by Partnership on b. Moreover, Taxpayer represents that the Project was resold on h.

Accordingly, based solely on Taxpayer's representations, and the relevant law set forth above, we rule as follows:

1. Company B acquired the Project by foreclosure of a purchase-money security interest held by Company B;

2. the requirements of § 42(d)(2)(B)(ii) were met with respect to the placement in service of the Project by Partnership on b and the subsequent placement in service of the Project by Company B on f; and

3. the Project was resold within 12 months after f.

Therefore, we conclude that the requirements of § 42(d)(2)(D)(ii)(IV) are satisfied and the f placement in service by Company B, who acquired the Project by foreclosure of a purchase-money security interest held by Company B, does not constitute a new placed in service date for purposes of § 42(d)(2)(B)(ii).

No opinion is expressed or implied regarding the application of any other provisions of the Code or Income Tax Regulations. Specifically, we offer no opinion,

either expressly or impliedly, on whether the Project qualifies for the low-income housing tax credit under § 42, the bond and loan documents constitute a purchase-money security interest in the Project, the validity of the Project's costs included in eligible basis, the date the Project was acquired by foreclosure, or the date the Project was placed in service by Company B.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney filed with this request, we are sending a copy of this letter ruling to Taxpayer and Taxpayer's second authorized representative.

Sincerely yours,

Harold E. Burghart

Harold E. Burghart
Assistant to the Branch Chief,
Branch 5
Office of Assistant Chief Counsel
(Passthroughs and Special
Industries)

Enclosure: 6110 copy