Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Number: **200204006**
Release Date: 1/25/2002
Index Number: 42.01-00

Person to Contact:

Telephone Number:
(202) 622-3040
Refer Reply To:
CC:PSI:5: PLR-132564-01
Date:
October 16, 2001

LEGEND

Taxpayer =

State A =

State A Fund =

Organization B =

Individual C =

Apartment D =

Partnership E =

a =

b =

c =

d =

e =

f =

g =

Dear :

This letter is in response to your submission of June 8, 2001, and subsequent correspondence concerning your request for a private letter ruling pertaining to § 42(d)(2)(B)(ii)(I) of the Internal Revenue Code. You have provided the following representations:

FACTS

Taxpayer is a State A limited partnership. Organization B is the general partner of Taxpayer. The limited partner of Taxpayer is Individual C.

Taxpayer was formed to purchase, extensively rehabilitate, and operate a multifamily rental housing development to be known as Apartment D, consisting of a residential rental housing units in b buildings located on c contiguous parcels. Taxpayer intends to finance Apartment D with a loan from the State A Fund, a loan from Organization B funded by a grant from the Federal Home Loan Bank, and low-income housing tax credits. Organization B will be the developer of Apartment D. The limited partner will be redeemed out when an equity investor is admitted that can take advantage of the expected federal income tax benefits, principally the low-income housing tax credit under § 42.

Organization B has entered into a purchase and sale agreement for Apartment D with its current owner, Partnership E, which acquired the property in g. Partnership E did not make any nonqualified substantial improvement to the buildings during its ownership.

Organization B's rights under the purchase and sale agreement have been assigned to Taxpayer. Taxpayer intends to close the purchase of Apartment D by d, if it receives an allocation of low-income housing tax credits on or before such date. Taxpayer intends that Apartment D qualify for 9 percent rehabilitation credits and 4 percent acquisition credits.

In e, two of the partners of Partnership E sold their combined f percent partnership interest to other partners (the transferee partners). Partnership E made a § 754 election for the year in which the transfers occurred. Partnership E made adjustments under § 743(b) to the basis of Apartment D with regard to the transferee partners. The adjustments were treated as newly purchased recovery property placed in service at the time of the transfer.

REQUESTED RULING

Taxpayer requests a private letter ruling that the § 743(b) adjustments to the basis of Apartment D with regard to the transferee partners does not constitute a placed

in service event under § 42(d)(2)(B)(ii)(I).

LAW AND DISCUSSION

Section 42(a) provides a tax credit for investment in low-income housing placed in service after December 31, 1986. For any tax year in a 10-year credit period, the amount of credit is equal to the applicable percentage of the qualified basis of each qualified low-income building.

Section 42(b)(1) provides that the term applicable percentage means 9 percent for new buildings which are not federally subsidized for the tax year, or 4 percent for new buildings which are federally subsidized for the tax year, and existing buildings.

Under § 42(d)(2)(B)(ii), in order for an existing building to qualify for the 4 percent low-income housing tax credit, there must be a period of at least 10 years between the date of the building's acquisition by the taxpayer and the later of:

I) the date the building was last placed in service, or

II) the date of the most recent nonqualified substantial improvement of the building.

Section 754 provides that if a partnership files an election in accordance with regulations prescribed by the Secretary, the basis of partnership property is adjusted, in the case of a distribution of property, in the manner provided in § 734, and, in the case of transfer of a partnership interest, in the manner provided in § 743. Such an election shall apply with respect to all distributions of property by the partnership and to all transfers of interests in the partnership during the tax year with respect to which the election was filed and all subsequent tax years.

Section 1.754-1(b) of the Income Tax Regulations provides that an election under § 754 and § 1.754-1 to adjust the basis of partnership property under §§ 734(b) and 743(b), with respect to a distribution of property to a partner or a transfer of an interest in a partnership, shall be made in a written statement filed with the partnership return for the tax year during which the distribution or transfer occurs. For the election to be valid, the return must be filed no later than the time prescribed by § 1.6031(a)-1(e) (including extensions thereof) for filing the return for that tax year.

Section 743(b) provides that, in the case of a transfer of an interest in a partnership by sale or exchange or upon the death of a partner, a partnership with respect to which an election under § 754 is in effect shall (1) increase the adjusted basis of the partnership property by the excess of the basis to the transferee partner of the transferee partner's interest in the partnership over the transferee partner's proportionate share of the adjusted basis of the partnership property, or (2) decrease the adjusted basis of the partnership property by the excess of the transferee partner's proportionate share of the adjusted basis of the partnership property over the basis of

the transferee partner's interest in the partnership.

In the present case, we conclude that the § 743(b) adjustments to the basis of Apartment D with respect to the transferee partners of Partnership E is not a placed-in-service event for purposes of § 42(d)(2)(B)(ii)(I).

No opinion is expressed or implied regarding the application of any other provisions of the Code or regulations. Specifically, we express no opinion on whether Apartment D qualifies for the low-income housing tax credit under § 42 or on the validity of Apartment D's costs included in eligible basis. Furthermore, we express no opinion regarding the tax consequences of these transactions for any partners of Partnership E.

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

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

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

Attachments:
Copy of this letter
Copy for section 6110 purposes