Internal Revenue Service

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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:

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November 17, 2004

In Re:

LEGEND

Taxpayer =

Project =

Individual A =

Company B =

Organization C =

Individual D =

Company E =

Company F =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

Dear :

This letter responds to your letter of July 12, 2004, and subsequent correspondence, submitted on behalf of the Taxpayer requesting a ruling that no placed-in-service event has occurred with respect to Taxpayer's property for purposes of the 10-year holding period requirement for existing buildings under § 42(d)(2)(B)(ii) of the Internal Revenue Code as a result of certain transactions described below. The relevant facts as represented in these submissions are set forth below.

FACTS

The Taxpayer was organized on a by and among Individual A and Company B as limited partners and Individual A as general partner for the purpose of owning and operating a multifamily residential rental property, the Project. The Project consists of k units contained in l buildings.

On b, the Taxpayer's limited partnership agreement was amended and restated to admit Organization C as the c percent Investor, to admit various others as Class A limited partners owning collectively d percent, to admit Individual D as an e percent general partner, to permit Individual A to withdraw as a limited partner and to make certain other changes regarding the rights, obligations and duties of both the limited and general partners.

Under the amended and restated limited partnership agreement, the Taxpayer continues in existence until f unless certain events occur on an earlier date. None of these events have occurred. The amended and restated agreement also requires the written consent of the general partner prior to any assignment or transfer of a limited partnership interest. This consent may be granted or withheld in the sole discretion of the general partner.

The Taxpayer's limited partnership agreement was again amended and restated on g to permit the withdrawal of the h individual general partners (each owning e percent), the assignment of the general partner interest owned by each to Company E (a newly formed limited liability company) and the admission of Company E as the i percent substitute general partner under the limited partnership agreement. Individual D and Individual A are the sole members of Company E.

The term of existence established in the Organization C limited partnership agreement expired on j and was not affirmatively extended by the partners of Organization C. Organization C purportedly transferred its c percent limited partner interest in the Taxpayer and Taxpayer purportedly terminated on j. Immediately prior to j, Organization C owned a greater than 50-percent interest in Taxpayer's capital and profits. Taxpayer would not be considered an investment company within the meaning of § 351 if incorporated.

The Taxpayer has agreed to sell its property to Company F, an entity intending to rehabilitate the property and qualify for both acquisition and rehabilitation low-income housing credits under § 42.

RULING REQUESTED

A ruling is requested that no placed-in-service event has occurred with respect to the Taxpayer's property for purposes of § 42(d)(2)(B)(ii) as a result of the transfer of a 50-percent or more interest in the Taxpayer's capital and profits.

LAW AND DISCUSSION

Section 42(a) provides for 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 section 42(d)(2)(B)(ii), in order for an existing building to qualify for the 4 percent low-income housing 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 42(d)(2)(D)(ii) provides a list of certain placed-in-service events that will be ignored for purposes of the 10-year placed in service rule of § 42(d)(2)(B)(ii). Under § 42(d)(2)(D)(ii)(I), a placed in service event will not be taken into account in connection with the acquisition of a building in a transaction in which the basis of the building in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of the building in the hands of the person from whom acquired.

Section 708(b)(1)(B) provides that a partnership shall be considered as terminated if within a 12-month period there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits.

Section 1.708-1(b)(4) of the Income Tax Regulations provides, in part, that if a partnership is terminated by a sale or exchange of an interest, the following is deemed to occur: The partnership contributes all of its assets and liabilities to a new partnership in exchange for an interest in the new partnership; and, immediately thereafter, the terminated partnership distributes interests in the new partnership to the purchasing partner and the other remaining partners in proportion to their respective interests in the terminated partnership in liquidation of the terminated partnership, either for the continuation of the business by the new partnership or for its dissolution and winding up. Section 1.708-1(b)(4) applies to terminations of partnerships occurring on or after May 9, 1997.

Section 721(a) provides that no gain or loss shall be recognized to a partnership or to any of its partners in the case of a contribution of property to the partnership in exchange for an interest in the partnership.

Section 721(b) provides that the general nonrecognition rule of §721(a) shall not apply to gain realized on a transfer of property to a partnership which would be treated

as an investment company (within the meaning of §351) if the partnership were incorporated.

Section 723 provides that the basis of property contributed to a partnership by a partner shall be the adjusted basis of such property to the contributing partner at the time of the contribution increased by the amount (if any) of gain recognized under §721(b) to the contributing partner at such time.

Based solely on the facts submitted and the representations provided, if the ¡ transaction resulted in a §708(b)(1)(B) termination, Taxpayer would be treated as contributing all assets and liabilities, including the Project, to a new partnership. Under §723, the resulting partnership would determine its basis in its assets through reference to the basis of the property in the terminating partnership's hands. Consequently, we conclude that §42(d)(2)(D)(ii)(I) would apply to any transactions that were deemed to occur as the result of §708(b)(1)(B) termination on ¡ and that the ¡ transaction does not result in a placed-in-service event for purposes of § 42(d)(2)(B)(ii).

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts above under any other provision of the Internal Revenue Code. Specifically, no opinion is expressed on whether the ¡ transactions actually resulted in a termination of Taxpayer under §708(b)(1)(B) or whether any costs of acquisition or rehabilitation in the Project will qualify otherwise for the low-income housing credit under section 42. In accordance with the Taxpayer's power of attorney, we are sending a copy of this letter ruling to the Taxpayer's authorized representative.

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

Sincerely,

Harold E. Burghart
Senior Advisor
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Attachments:
Copy of this letter
Copy for section 6110 purposes