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Date:
September 27, 2006

In Re:

LEGEND

Taxpayer =

Project A =

Corp B =

Partnership C =

County D =

Office E =

Office F =

Corporation G =

Program H =

Agency I =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

Dear :

This letter responds to your letter dated March 24, 2006, and subsequent correspondence, submitted on behalf of Taxpayer, requesting a ruling regarding the 10-year holding period requirement under section 42(d)(2)(B)(ii) of the Internal Revenue Code. The relevant facts as represented in these submissions are set forth below.

FACTS

Taxpayer, a limited liability corporation, was formed to acquire, rehabilitate, construct and operate residential rental properties for low-income persons. The Taxpayer has two members. Corp B, an organization exempt from tax under section 501(c)(3), is the managing member and holds an a percent membership interest in Taxpayer, and Partnership C is the investor member, holding a b percent membership interest in Taxpayer. The Internal Revenue Service examination area that will have audit jurisdiction over Taxpayer is Office E, and the examination area that will have audit jurisdiction over Corp B is Office F.

Project A is a c unit housing development, such units to be rented to households whose incomes do not exceed 60 percent of area median income for County D. Project A was acquired by Corporation G pursuant to a conveyance by deed on d. Corporation G held Project A from d to e. County D acquired legal title to Project A on e from Corporation G and simultaneously transferred legal title to Corp B on e. County D operates Program H, which helps ensure that an adequate supply of low-income housing is made available to residents. Once a Program H application from a developer is accepted, County D issues bonds in the amount necessary to acquire the property. County D purchases properties and records a forty year low-income housing restriction on the property and simultaneously transfers the property to a Program H applicant for f.

Taxpayer acquired legal title to Project A on g through a bargain and sale deed conveyance from Corp B for the consideration allocated to Project A of h consisting of l in the form of a purchase money promissory note and m in cash. In order to assist Taxpayer's efforts to develop and operate Project A as a low-income residential rental property, County D through its Agency H, issued i of industrial development revenue bonds for rehabilitation of Project A and other projects. As a condition of obtaining bond financing, Taxpayer transferred legal title to Agency I on g, for the consideration of f.

Taxpayer represents, however, that it remains the tax owner of Project A. On j, Agency I will re-convey title back to Taxpayer and Taxpayer will be contractually obligated to make installment payments that equal the amount of debt service for the rehabilitation costs of the project, which is k.

Taxpayer further represents that for purposes of section 42(d)(7)(B)(i): (1) the tax-exempt obligations have been issued; (2) Project A has met the requirements for allocation of a housing credit dollar amount under the qualified allocation plan applicable to the area in which Project A is located as required by section 42(m)(1)(D); (3) the governmental unit issuing the bonds has determined the credit dollar amount necessary for the financial feasibility of Project A and its viability as a qualified low-income housing project throughout the credit period as required by section 42(m)(2)(D); and (4) the state housing credit agency has assigned a building identification number (B.I.N.) to the building as is customarily done when an allocation of credit is made by the state housing credit agency.

LAW AND ANALYSIS

Section 38(a) provides for a general business 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 section 42(a).

Section 42(a) provides that, for purposes of section 38, the amount of the low-income housing credit determined under section 42 for any taxable year in a 10-year credit period shall be an amount equal to the applicable percentage of the qualified basis of each qualified low-income building.

Section 42(c) provides that the qualified basis of any qualified basis of any qualified low-income building for any taxable year is an amount equal to the applicable fraction of the eligible basis of such building.

Section 42(d)(2)(A) and (B) provides that the eligible basis of an existing building will be zero unless the building meets the following requirements: (i) the building is acquired by purchase (as defined in section 179(d)(2)); (ii) there is 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 building's most recent nonqualified substantial improvement (as defined in section 42(d)(2)(D)(i)); and (iii) the building was not previously placed in service by the taxpayer or by any person who was a related person with respect to the taxpayer as of the time the building was previously placed in service. Further, existing buildings are eligible for a credit only if a credit is allowable by reason of substantial rehabilitation of the building under section 42(e).

In determining when a building was last placed in service for purposes of satisfying the requirement in section 42(d)(2)(B)(ii), section 42(d)(2)(D)(ii) provides that certain placements in service are not taken into account.

Section 42(d)(2)(D)(ii)(III) provides that for purposes of determining under section 42(d)(2)(B)(ii) when a building was last placed in service, there shall not be taken into account any placement in service in connection with the acquisition of the building in a transaction by any governmental unit or qualified nonprofit organization (as defined in section 42(h)(5)) if the requirements of section 42(d)(2)(B)(ii) are met with respect to placement in service by such unit or organization and all the income from such property is exempt from Federal income taxation.

Section 42(h)(5)(C) defines the term qualified nonprofit organization as an organization described in section 501(c)(3) or (4), and is exempt from tax under section 501(a), such organization is determined by the State housing credit agency not to be affiliated with or controlled by a for-profit organization, and one of the exempt purposes of such organization includes the fostering of low-income housing.

Section 42(d)(7)(A) and (B) provides, in general, that the requirements of section 42(d)(2)(B) do not apply if a taxpayer acquires an existing building (or interest therein) for which a credit was allowed to any prior owner under section 42(a) and the taxpayer acquires the building (or interest therein) before the end of the building's compliance period.

In general, a transfer of the property results in a new placed in service date if, on the date of the transfer the property is ready and available for its intended purpose. See 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-91 (1986), 1986-3 (Vol. 4) C.B. 91. However, if section 42(d)(7) applies to a transfer of the property, the fact that the transfer results in a new placed in service date does not jeopardize the purchaser's eligibility to claim the low-income housing credit, because the requirements of section 42(d)(2)(B) do not apply. Specifically, Rev. Rul. 91-38, 1991-2 C.B. 3, Q&A-4, provides that in the case of buildings placed in service after 1989 and financed with tax-exempt bonds issued after 1989, if a credit allocation is not necessary because the building meets the requirements of section 42(h)(4)(B), the credit will be considered allowed to the prior owner for purposes of section 42(d)(7)(B)(i) when the following conditions are met: (1) the tax-exempt obligations have been issued; (2) the building has met the requirements for allocation of a housing credit dollar amount under the qualified allocation plan applicable to the area in which the project is located as required by section 42(m)(1)(D); (3) the governmental unit issuing the bonds has determined the credit dollar amount necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period as required by section 42(m)(2)(D); and (4) the state housing credit agency has assigned a building identification number (B.I.N.) to the building as is customarily done when an allocation of credit is made by the state housing credit agency.

In the instant case, based solely on the facts submitted and the representations made, we conclude that that the transfers on e meet the requirements of section 42(d)(2)(D)(ii)(III), and thus do not constitute placed-in-service events for purposes of

section 42(d)(2)(B)(ii). Further, we conclude that Taxpayer meets the requirements of section 42(d)(7) in regard to the events on g, and thus the requirements of section 42(d)(2)(B) do not apply. Accordingly, when Corp B conveyed Project A to Taxpayer on g, more than 10 years had elapsed since Project A had last been placed in service on d.

We expressly provide no ruling on whether Taxpayer's cost of acquisition and rehabilitation of Project A will otherwise qualify for the low-income housing credit under section 42. No opinion is expressed or implied regarding the application of any other provisions of the Code, regulations, or other legal requirements.

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.

Sincerely,

Paul F. Handleman
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:
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