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Person to Contact:

Telephone Number:

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Date:
September 9, 1999

Legend:

Taxpayer =

State 1 =

State 2 =

Project =

General Partner =

Limited Partner =

a =

b =

c =

d =

e =

f =

g =

h =

i =

k =

Dear

This letter responds to your authorized representative's letter dated a on behalf of Taxpayer requesting a ruling that the use of no more than i residential rental units as after-school care rooms as described in the below facts will qualify as a common area that is functionally related and subordinate to Project within the meaning of § 1.103-8(a)(3) and § 1.103-8(b)(4)(iii) of the Income Tax Regulations. The Internal Revenue Service District Office that has examination jurisdiction over the Taxpayer is the b District.

The relevant facts as represented in your submission are set forth below.

FACTS:

Taxpayer, a State 1 limited partnership, was formed on c to develop, own and manage Project. The general partner of Taxpayer is General Partner, a State 1 limited partnership. The limited partner of Taxpayer is Limited Partner, a State 2 limited partnership. Project, which has been in operation since d, is a "qualified low-income housing project" as defined in § 42(g) of the Internal Revenue Code, consisting of e residential units in f residential buildings. Taxpayer has elected to satisfy the 40/60 minimum set-aside requirement for Project, as described in § 42(g)(1)(B), and g% of the residential units in Project are set aside for low-income tenants whose income is at or below 60% of the median income for the area, as adjusted for family size.

Project includes a high proportion of single working parent and dual working parent households, which results in a relatively high number of unsupervised school-aged children. Based on Taxpayer's experience, this can result in higher rates of property damage and criminal activity in Project than if there was a lower proportion of such households. In order to reduce this result, Taxpayer has chosen to provide after-school child care (the "Program") for the school-aged residents of Project. The provision of after-school care through the Program is a valuable social service that benefits a large segment of Project residents who have school-aged children. In addition to providing supervision of school-aged residents, the Program provides recreational and educational activities, computer training and socialization opportunities. Additionally, the Program directly benefits other residents and Taxpayer by providing a safer, more peaceful and better-maintained property. Taxpayer believes that the Program has contributed positively to the achievement of safe and secure housing for all Project residents.

The Program is currently housed in a community building and provides after-school care for approximately h children on a daily basis. The Program is available only to residents of Project, at no charge. Due to higher than anticipated demand for the Program from residents, the Program has become larger than was originally anticipated and the community building in which the Program is housed is no longer

adequate to accommodate the number of children who participate. Additionally, the operation of the Program in the community building is interfering with other uses of that building, which include: Project's leasing activities; resident social functions; first aid training; drug awareness education; anti-crime programs; credit counseling programs; health education; and crises intervention services. Rather than reduce the availability of the Program to the detriment of residents and Project as a whole, Taxpayer proposes to convert no more than i residential rental units into after-school care rooms for the exclusive use of the Program. Taxpayer anticipates that the conversion of i residential rental units for use by the Program will enable approximately k additional school-aged residents to participate in the Program. The size of the residential units to be converted will not exceed the size necessary to provide on-site, after-school child care services to residents based upon the historical and anticipated demand for the Program. The converted after-school care rooms will be used exclusively by Project residents and persons providing services to them. No other aspects of the Program will change.

RULING REQUESTED:

Taxpayer requests that the Service rule that the use of no more than i residential rental units as after-school care rooms as described in the facts will qualify as a common area which is functionally related and subordinate to Project withing the meaning of § 1.103-8(a)(3) and § 1.103-8(b)(4)(iii).

LAW AND ANALYSIS:

Section 42(a) provides a tax credit for investment in low-income housing buildings placed in service after December 31, 1986. For any taxable year in a ten-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(c)(1)(A) defines the qualified basis of any qualified low-income housing building for any taxable year as an amount equal to the applicable fraction (determined as of the close of the taxable year) of the eligible basis of the building (determined under § 42(d)). Under § 42(c)(1)(B), the applicable fraction means the smaller of the unit fraction or the floor space fraction.

Section 42(d)(1)(A) provides that the eligible basis of a new building is its adjusted basis as of the close of the first taxable year of the credit period. Section 42(d)(4)(A) provides that, except as provided in § 42(d)(4)(B), the adjusted basis of any building is determined without regard to the adjusted basis of any property that is not residential rental property. Under § 42(d)(4)(B), the adjusted basis of any building is determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation) used in common areas or provided as comparable amenities to all residential rental units in the building.

The legislative history of § 42 states that residential rental property for purposes of the low-income housing credit has the same meaning as residential rental property within the meaning of § 103. Thus, residential rental property includes residential rental units, facilities for use by the tenants, and other facilities reasonably required by the project. Further, the legislative history states that the allocable cost of tenant facilities, such as swimming pools, other recreational facilities, and parking areas, may be included in eligible basis provided there is no separate fee for the use of these facilities and they are made available on a comparable basis to all tenants in the project. H.R. Conf. Rep. 841, 99th Cong. 2d Sess. II-89-90 (1986), 1986-3 (Vol. 4) C.B. 89-90.

Section 1.103-8(a)(3) provides that an exempt facility includes land, building, or other property functionally related and subordinate to the facility. Property is not functionally related and subordinate to a facility if it is not of a character and size commensurate with the character and size of the facility.

Section 1.103-8(b)(4)(iii) provides that under § 1.103-8(a)(3), facilities that are functionally related and subordinate to residential rental projects include facilities for use by the tenants, for example, swimming pools, other recreational facilities, parking areas, and other facilities that are reasonably required for the project, such as heating and cooling equipment, trash disposal equipment, or units for resident managers or maintenance personnel.

Taxpayer represents that the residential units to be converted to house the Program will be of a character and size commensurate with the character and size of Project, based upon the historical demand for the Program by Project residents and its anticipated use by Project residents. Taxpayer also represents that the resident population of Project includes households who require some form of child care after school and during breaks from school. Taxpayer further represents that the room(s) that will be utilized for the Program will be for the exclusive use of Project residents and service providers and residents will not be charged for enrollment in or use of the Program.

Accordingly, based solely on the representations and relevant law as set forth above, we conclude that the use of no more than i residential rental units as after-school care rooms as described in the facts will qualify as common area which is functionally related and subordinate to Project withing the meaning of § 1.103-8(a)(3) and § 1.103-8(b)(4)(iii).

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 the Project qualifies for the low-income housing tax credit under § 42 nor the effect that the conversion of up to i residential rental units to a common area will have on the applicable fraction (and qualified basis) of the building(s) in which the converted units are located.

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.

Sincerely yours,

Harold E. Burghart

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Enclosure:
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