

Internal Revenue Service

Number: **200334011**
Release Date: 8/22/2003
Index Numbers: 42.08-04

Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:5 — PLR-100988-03
Date: May 07, 2003

Legend:

Taxpayer =

GP =

ILP =

LP2 =

OLP =

State 1 =

State 2 =

Project =

County =

City =

Issuer =

Bank =

Bank Program =

Holder =

Series K-1 Tax-
Exempt Bonds =

Series K-2 Tax-Exempt Bonds	=
Agency	=
Credit Agency	=
<u>a</u>	=
<u>b</u>	=
<u>c</u>	=
<u>d</u>	=
<u>e</u>	=
<u>f</u>	=
<u>g</u>	=
<u>h</u>	=
<u>i</u>	=
<u>k</u>	=
<u>l</u>	=
<u>m</u>	=
<u>n</u>	=
<u>o</u>	=
<u>p</u>	=
<u>r</u>	=
<u>s</u>	=
<u>t</u>	=
<u>u</u>	=
<u>v</u>	=
<u>w</u>	=
<u>x</u>	=

Dear _____ :

This letter responds to your letter dated December 27, 2002, submitted on behalf of Taxpayer, requesting a ruling that the repayment of a portion of a bond loan and redemption of a portion of the Project's tax-exempt bonds at any time after the date on which the Project is placed in service for purposes of § 42 of the Internal Revenue Code will not, in and of itself, result in a determination that the Project was not financed by tax-exempt bonds for purposes of § 42(h)(4)(B).

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

Taxpayer, a State 1 limited partnership, was formed on a pursuant to an Agreement of Limited Partnership (the "Original Partnership Agreement") to develop, construct, own and operate the Project. The general partner of Taxpayer is GP, a State 1 nonprofit public benefit corporation. The original limited partner was OLP. The Original Partnership Agreement was amended and restated as of b, to provide for the withdrawal of OLP and the admission of ILP, a State 2 limited partnership as the investor limited partner and LP2, a State 2 corporation, as the special limited partner. The Original Partnership Agreement was further amended and restated as of c (the "Amended Partnership Agreement").

Taxpayer is currently constructing the Project in City. The Project will consist of d units (e one-bedroom units and a manager's unit) in a single building. The e one-bedroom units will be rented to families whose incomes are equal to or less than 50 percent of the area median income. Construction of the Project commenced on f, on land that was subleased to Taxpayer by OLP. Taxpayer expects to complete construction and place the Project in service in g, and to have all units in the Project occupied by the end of h.

Taxpayer expects to incur construction costs that are included in eligible basis for the Project in the aggregate amount of approximately \$j. Taxpayer is financing the construction of the Project with capital contributions from ILP in the anticipated aggregate amount of \$k, with the proceeds of the \$l Series K-1 Tax-Exempt Bonds and the \$m Series K-2 Tax-Exempt Bonds, with the proceeds of a loan from Agency in the principal amount of \$n and the proceeds of a second loan from County in the principal amount of \$o. The Series K-1 Tax-Exempt Bonds and the Series K-2 Tax-Exempt Bonds are hereinafter collectively referred to as the "Tax-Exempt Bonds." In addition, Taxpayer has applied for a loan in an amount of up to \$p from Bank (the "Bank Program Loan"). Taxpayer represents that it will finance more than 50 percent of the costs of the Project with the proceeds of the Tax-Exempt Bonds.

The Tax-Exempt Bonds were issued by Issuer. They are secured by a Master Pledge and Assignment between Issuer and Holder. The Tax-Exempt Bonds were subject to the volume cap under § 146. Taxpayer represents that the interest on the Tax-Exempt Bonds is excludable from gross income under § 103.

Issuer will lend \$r of the proceeds of the Tax-Exempt Bonds to Taxpayer (the "Bond Loan"). Prior to the conversion of the Bond Loan from the construction phase to the permanent phase, which will occur upon substantial completion of the Project, achievement of certain lease-up and debt service requirements and satisfaction of certain other requirements set forth in the loan documents evidencing the Bond Loan (the "Conversion Date"), the Bond Loan will be a recourse obligation of Taxpayer that will bear interest at a variable rate. After the Conversion Date, the Bond Loan will be a nonrecourse obligation of Taxpayer that will bear interest at a fixed rate of approximately s percent.

Taxpayer intends to claim low-income housing tax credits permitted under § 42 for the Project. Taxpayer expects that the Project will satisfy all requirements under § 42, and has received the governmental approvals for the Project as required by § 42 that are available prior to the completion of the Project. Credit Agency has determined in accordance with the provisions of § 42(m)(1)(D) that the Project will satisfy the requirements for allocations of housing tax credit under its qualified allocation plan. Further, Credit Agency anticipates that the allowance of the housing tax credit to the Project will satisfy the financial feasibility and project viability requirements of § 42(m)(2)(D). Credit Agency anticipates that the annual amount of the housing tax credit allowable for the Project will be approximately \$t. This amount is less than the \$u of housing tax credit currently projected to be available to Taxpayer. Taxpayer has applied for an additional tax-exempt reservation letter in an amount equal to the difference between the foregoing amounts.

Following the completion of construction and the placement in service of the Project, Taxpayer expects that it will retire Bond Loan principal in the amount of \$v. As a result, the Bond Loan will be paid down to \$w. Taxpayer expects that the Bond Loan will be paid down with the proceeds of the Bank Program Loan and with the proceeds of the completion installment and final closing installment of ILP's capital contributions in the amount of \$x.

Taxpayer represents that the Project is expected to provide housing for lower income tenants. In order to keep rents at affordable levels, Taxpayer must reduce the cost of debt service required to finance the Project. Taxpayer expects that the proceeds of the Bank Program Loan and the completion installment and the final closing installment of ILP's capital contributions will pay down the Bond Loan to a principal amount that will lower the required debt service on the Bond Loan and other debt, and allow Taxpayer to maintain low-income rents.

Taxpayer makes the following additional representations. Taxpayer will claim only the 30 percent present value credit allowable under § 42(b)(2)(B)(ii) for the Project. Taxpayer will not claim any 70 percent present value credit described in § 42(b)(2)(B)(i) for the Project. Second, in order for Taxpayer to be entitled to claim the low-income housing tax credit, Taxpayer must satisfy, in addition to the other requirements of § 42, the requirements of § 42(h). Section 42(h) limits the aggregate amount of credit

allowable under § 42 in each state. Taxpayer intends to claim the credit under the provisions of § 42(h)(4)(B). Third, Taxpayer expects that the aggregate basis of the building and the land comprising the Project will not exceed \$j.

Taxpayer requests a ruling that, provided the requirements of § 42(h) are otherwise satisfied with respect to the Project, the repayment of a portion of the Bond Loan and the redemption of a portion of the Tax-Exempt Bonds at any time after the date on which the Project is placed in service under § 42 will not, in and of itself, permit a determination that the Project was not financed with the Tax-Exempt Bonds in accordance with § 42(h)(4)(B).

Section 42(a) provides a tax credit for investment in low-income housing buildings placed in service after December 31, 1986.

Section 42(h)(1)(A) provides that the amount of credit determined under § 42 for any taxable year with respect to any building shall not exceed the housing credit dollar amount allocated to such building under § 42(h).

Section 42(h)(1)(B) provides that an allocation generally shall be taken into account under § 42(h)(1)(A) only if it is made not later than the close of the calendar year in which the building is placed in service.

Section 42(h)(3)(A) provides that the aggregate housing credit dollar amount which a housing credit agency may allocate for any calendar year is the portion of the state housing credit ceiling allocated under § 42(h)(3) for such calendar year to such agency.

Section 42(h)(4)(A) provides that § 42(h)(1) does not apply to any portion of the credit otherwise allowable under § 42(a) which is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under § 103 if--

(i) such obligation is taken into account under § 146, and

(ii) principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing.

Section 42(h)(4)(B) provides that, if 50 percent or more of the aggregate basis of any building and the land on which the building is located is financed by a tax-exempt obligation described in § 42(h)(4)(A), § 42(h)(1) does not apply to any portion of the low-income housing credit allowable under § 42(a) with respect to such building.

In the present case, Taxpayer represents that tax-exempt bond proceeds representing more than 50 percent of the aggregate basis of the Project and the land on which the Project is located will be spent on or before the date on

which the Project is placed in service. Taxpayer further represents that no portion of the Tax-Exempt Bonds will be redeemed until after the date the Project is placed in service.

Accordingly, based solely on the representations and relevant law as set forth above, we conclude that provided the requirements of § 42(h) are otherwise satisfied with respect to the Project, the repayment of a portion of the Bond Loan and the redemption of the Tax-Exempt Bonds at any time after the date on which the Project is placed in service for all purposes under § 42 will not, in and of itself, result in a determination that the Project was not financed with the Tax-Exempt Bonds under § 42(h)(4)(B).

No opinion is expressed or implied regarding the application of any other provisions of the Code or regulations, including §§ 103 and 141-150. Specifically, we express no opinion on whether the Project qualifies for the low-income housing credit under § 42, the validity of costs included in the Project's basis, whether and when the "50-percent aggregate basis" requirement in § 42(h)(4)(B) is met, or whether any other requirement of § 42(h)(4) is met.

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 on file, a copy of this letter is being sent to Taxpayer.

Sincerely yours,

HAROLD BURGHART
Senior Advisor, Branch 5
(Passthroughs and Special Industries)

Enclosure:

Copy of letter
Copy for 6110 purposes