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Washington, D.C. 20044

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:5 — PLR-101870-02
Date:
May 3, 2002

Legend:

Taxpayer =

Authority =

Bank =

State =

City =

County =

b =

c =

Date =

Year =

Dear :

This letter responds to your letter dated November 1, 2001, and subsequent correspondence, submitted on behalf of Taxpayer, requesting a private letter ruling regarding the application of § 42(j) of the Internal Revenue Code to a proposed transfer from Taxpayer to the Authority of bare legal title to certain real property owned by Taxpayer.

Taxpayer represents the following facts.

FACTS

Taxpayer is a State limited partnership formed to develop, own, construct, rehabilitate and operate a multifamily rental housing development consisting of b residential rental housing units located in City (the Project). The general partner of Taxpayer is the Authority, a public body corporate and politic of State. The limited partner of Taxpayer is Bank.

Under the applicable State law, the Project, which was placed in service on Date, is subject to real estate taxes levied by County ($c for Year), and does not currently qualify for real estate tax exemption. However, under the applicable State law, if the Authority was to own the Project, the Project would not be subject to real estate taxes in County. Taxpayer has received a written ruling from State's Department of Revenue (DOR) that property owned by the Authority but leased to Taxpayer in which the Authority is the sole general partner should not be subject to property tax.

Therefore, Taxpayer intends to transfer to the Authority record title to the real estate and improvements with respect to the Project, subject to existing easements and encumbrances, pursuant to a statutory form quitclaim deed. Immediately after this transaction, Taxpayer intends to lease the Project from the Authority pursuant to a lease agreement. Taxpayer represents that it will retain all of the benefits and burdens of ownership of the Project; therefore, there will be no sale or exchange of the Project for federal or state income tax purposes.

Taxpayer has informed the DOR of the intended sale-leaseback transaction. Subject to review of the transaction documentation, the DOR has agreed that the Project would be exempt from real estate taxes after the sale-leaseback.

RULING REQUESTED

Based on the foregoing, which assumes that under these facts the transfer of bare legal title to the Project from Taxpayer to the Authority is not a sale or exchange (for federal or state income tax purposes), and does not result in a shift in the benefits and burdens of ownership (for federal and state income tax purposes), Taxpayer requests a ruling that the § 42(j) recapture provisions do not apply to the proposed transfer of bare legal title to the Project by Taxpayer to the Authority.

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 10-year credit period, the amount of credit is equal to the applicable percentage of the qualified basis of each qualified low-income building.

In the case of any qualified low-income building placed in service by the taxpayer after 1987, § 42(b) provides, in part, that the term "applicable percentage" means the appropriate percentage prescribed by the Secretary for the month applicable under § 42(b)(2)(A)(i) or (ii). Section 42(b)(2)(B) provides that the percentages prescribed by the Secretary for any month shall be percentages that will yield over a 10-year period amounts of credit that have a present value equal to: (i) 70 percent of the qualified basis of new buildings that are not federally subsidized for the taxable year (70-percent present value credit), and (ii) 30 percent of the qualified basis of existing buildings, and of any new buildings that are federally subsidized for the taxable year (30-percent present value credit).

Section 42(c)(1)(A) provides that the qualified basis of any qualified low-income building for any taxable year is an amount equal to the applicable fraction (defined in § 42(c)(1)(B)) of the eligible basis of such building. In general, under § 42(d)(1), 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(j) provides rules concerning the recapture of low-income housing tax credits. Section 42(j)(1) provides that if as of the close of any taxable year in the compliance period, the qualified basis of any building with respect to the taxpayer is less than the amount of qualified basis as of the close of the preceding taxable year, the taxpayer's tax for the taxable year shall be increased by the credit recapture amount. The credit recapture amount for a recapture event occurring during any year in the credit period (as defined in § 42(f)(1)) is one-third of all credits claimed (assuming no prior recapture) plus interest at the overpayment rate under § 6621, beginning with the date the recaptured amount was claimed.

The legislative history to § 42 provides generally that any change in ownership during the compliance period is a recapture event and that all dispositions of ownership interests in buildings are treated as transfers for purposes of recapture. See 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess., II-96 and II-102 (1986), 1986-3 (Vol. 4) C.B. 1, 96, 102. However, under § 42(j)(6), in the case of a disposition of a low-income building or an interest therein, a taxpayer can avoid recapture liability for the disposition if the taxpayer posts a satisfactory bond using Form 8693, Low-Income Housing Credit Disposition Bond, and it is reasonably expected that the building will continue to be operated as a qualified low-income building for the remaining compliance period of the building.

Taxpayer represents in the above facts that the transfer of bare legal title from Taxpayer to the Authority is not a sale or exchange for federal or state income tax purposes and will not result in a shift of the benefits and burdens of ownership for federal and state income tax purposes from Taxpayer to the Authority. This representation is a material fact in this case. Therefore, the issue being considered in this case is not whether a sale or exchange or a transfer of the benefits and burdens of ownership is, for federal income tax purposes, a recapture event under § 42, but

whether the transfer of bare legal title under the above facts is a disposition or change in ownership contemplated by the § 42 legislative history that results in a recapture event.

The transfer of bare legal title under the above circumstances would not be made for the evasion or avoidance of federal income tax. Further, the federal tax treatment of the proposed transaction has been disclosed to DOR officials. Taxpayer represents that all indicia of ownership of the Project (other than bare legal title) would remain unchanged. Consequently, the transfer of bare legal title in this case is not a disposition or change in ownership contemplated by the § 42 legislative history to result in a recapture event.

Accordingly, based solely on the representations and the relevant law set forth above, we rule that the transfer of bare legal title to the Project from Taxpayer to the Authority will not, under these facts, result in recapture under § 42(j).

No opinion is expressed or implied regarding the application of any other provision of the Code or regulations. Specifically, no opinion is expressed or implied regarding whether the transfer of bare legal title to the Project from Taxpayer to the Authority is a sale or exchange (for federal or state income tax purposes), or causes a shift in the benefits and burdens of ownership (for federal or state income tax purposes). Nor is any opinion expressed or implied regarding whether the Project otherwise qualifies for the low-income housing tax credit under § 42.

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

Enclosure:
6110 copy