Internal Revenue Service

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Department of the Treasury

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Refer Reply To:
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Date:
December 22, 1998

Legend:

Partnership =

Agency =

Project =

State =

City =

District =

Bank =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

o =

p =

q =

Dear :

This letter responds to your letter dated August 18, 1998, and subsequent submissions, on behalf of Partnership, requesting a letter ruling that, provided the requirements of § 42(h)(4) of the Internal Revenue Code are otherwise satisfied with respect to the Project, the acquisition and rehabilitation costs of the buildings and land comprising the Project will be treated as being financed by tax-exempt bonds for purposes of § 42(h)(4). The Internal Revenue Service District Office that has examination jurisdiction over Partnership is District.

Partnership represents that the facts are as follows:

FACTS:

Partnership, a State limited partnership, was formed to acquire, develop, operate, and manage the Project, an existing a building, b unit multi-family low-income housing residential apartment complex in City. Partnership has acquired the Project and anticipates that it will qualify for low-income housing tax credits.

Partnership acquired the Project from the U.S. Department of Housing and Urban Development (HUD) for $c by issuing a note in the amount of $d and making a down payment of $e in cash. There was a period of at least 10 years between the date Partnership acquired the Project and the date that the Project was last placed in service (or the date of the most recent non-qualified substantial improvements of the Project). Partnership intends to rehabilitate the Project into a low-income housing project that will qualify for low-income housing tax credit for acquisition and rehabilitation costs under § 42.

The Project was placed in service in f. The applicable percentage for the low-income housing acquisition and rehabilitation credits will be the 30 percent value credit (i.e., the "4 percent credit"). The aggregate basis of the buildings and the land comprising the Project is expected to be $g (land and building acquisition costs of $c, plus rehabilitation costs of $h, equals total projected aggregate basis of $g). The rehabilitation work is almost finished. There is only a remote likelihood that the total rehabilitation expenditures incurred by Partnership for the Project will be more (or less) than $h. The basis of the buildings comprising the Project on which low-income housing tax credit for acquisition and rehabilitation costs are intended to be taken is the cost basis of such buildings as determined under § 1012.

Agency will lend Partnership $i for permanent financing of the Project. The proceeds of the Agency loan are derived from tax-exempt bonds that were issued by Agency on j under the volume cap imposed by § 146. The Agency loan is expected to be made to Partnership in k. At the time the Agency loan is made to Partnership, the full amount of the loan ($i) will be used to repay the portion of the outstanding construction loan of $l from Bank that financed the rehabilitation costs of $h of the Project. All Agency loan proceeds will be spent by Partnership before the end of the first year of the credit period for the Project.

Partnership will make equal monthly amortizing payments on the Agency loan over its m life with the first monthly installment due approximately n days after the Agency loan is made. Neither the tax-exempt bond underlying the Agency loan nor the Agency loan itself will be redeemed on or before the end of the first year of the credit period for the Project.

The Agency loan of $i is expected to be 50 percent or more of the aggregate basis of $g for the buildings and land comprising the Project at each of the following dates: (i) the date the low-income housing tax credits for the Project are allowed; (ii) the

date the Project is placed in service; (iii) the date the Agency loan is made to Partnership; and (iv) the last day of the first year of the credit period for the Project.

If the Agency loan is made to Partnership in k, the first year of the credit period for the Project will be o, the placed-in-service year. However, if such loan is not made in k, Partnership expects that the Agency loan will be made in p, in which case Partnership will elect q, the taxable year succeeding o, as the first year of the credit period for the Project.

RULING REQUESTED:

Provided the requirements of § 42(h)(4) are otherwise satisfied with respect to the Project, the acquisition and rehabilitation costs of the buildings and land comprising the Project will be treated as being financed by tax-exempt bonds for purposes of § 42(h)(4).

LAW AND ANALYSIS:

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)(A) 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.

For purposes of § 42(h)(4)(A), § 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 with such tax-exempt obligations, § 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, Partnership represents that the aggregate basis of the buildings and land comprising the Project is expected to be $g (land and building acquisition costs of $c, plus rehabilitation costs of $h, equals total projected aggregate basis of $g). Partnership further represents that the proceeds of tax-exempt bonds subject to the volume cap imposed by § 146 will be used by Agency to lend Partnership $i that will be expended by the end of the first year of the credit period to repay the portion of the outstanding Bank construction loan that financed the rehabilitation costs of $h for the Project. Partnership also represents that the Agency loan and these underlying tax-exempt bonds will be outstanding at the end of the first year of the credit period. Moreover, Partnership represents that the Agency loan of $i is expected to be 50 percent or more of the aggregate basis of $g for the buildings and land comprising the Project at the end of the first year of the credit period.

Accordingly, based solely on the representations and relevant law as set forth above, we conclude that the acquisition and rehabilitation costs of the buildings and land comprising the Project will be treated as being financed by tax-exempt bonds for purposes of § 42(h)(4), provided the requirements of § 42(h)(4) are otherwise satisfied with respect to the Project. **This ruling is contingent upon the "50-percent aggregate basis" requirement in § 42(h)(4)(B) being satisfied at the end of the first year of the credit period with respect to the Project.**

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 the requirements of § 42(d)(2)(B) are met, or whether the "50-percent aggregate basis" requirement in § 42(h)(4)(B) is met.

In accordance with the power of attorney filed with this request, we are sending a copy of this letter ruling to Partnership.

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,

Kathleen Reed

Kathleen Reed
Assistant to the Branch Chief
Branch 5
Office of Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosure: 6110 copy