Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:5 — PLR-113643-99
Date: December 3, 1999

Legend:

Partnership =

Partnership M =
State 1 =
State 2 =
State 3 =
State 4 =
City 1 =
City 2 =
Corporation 1 =
GP1 =
LP1 =
LP2 =
LP3 =
LP4 =
Corporation 2 =
Corporation 3 =
Service =
Address =

County =

Individual A =

a =

b =

c =

d =

e =

f =

g =

h =

i =

k =

l =

m =

n =

o =

p =

q =

r =

s =

t =

u =

v =

w =

Dear :

This letter responds to your authorized representative's letter dated a and subsequent submission on behalf of Partnership requesting a ruling that the acquisition of a project by Partnership is in conformance with the 10-year holding period requirement in § 42(d)(2)(B)(ii) of the Internal Revenue Code. The Internal Revenue Service District Office that will have examination jurisdiction over Partnership is located in City 1.

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

FACTS:

Partnership is a State 1 limited partnership consisting of Corporation 1, a State 1 nonprofit public benefit corporation, as managing general partner; GP1, a State 1 general partnership, as administrative general partner; LP1, a State 2 limited partnership, as special limited partner; and LP2, a State 2 limited partnership, as limited partner. The ownership interests in Partnership are as follows: c% to the limited partner, d% to the special limited partner, d% to the managing general partner, and d% to the administrative general partner.

The general partners of the administrative general partner are Corporation 2, a State 3 corporation, whose president is e, and Corporation 3, a State 4 corporation, whose president is f. Corporation 2 owns a g% interest in the administrative general partner and Corporation 3 owns an h% interest.

Partnership owns real property located at Address on which Partnership, as its sole purpose, plans to develop a b-unit affordable housing apartment complex for low-income seniors (the "Project"). Partnership intends to set aside 100% of the Project's units for low-income seniors. In order for the Project to be economically feasible, the Project must utilize low-income housing tax credits.

Partnership acquired the Project property on i, from Partnership M, a State 1 partnership. Partnership M acquired the property through a grant deed, dated k, and recorded l, executed by its partners, f and m. Partners f and m acquired the property through a trustee's sale. Each partner received an individual one-half interest in the property through a trustee's deed upon sale dated n, and recorded o. Individual A, doing business as Service, as trustee under a deed of trust, executed the trustee's deed upon sale after the foreclosure of a deed of trust on the property when the then-owner, LP3, a State 1 limited partnership, defaulted on its mortgage obligations and filed for bankruptcy. LP3 had owned the property since p when LP4, a State 1 limited partnership, granted the property to LP3 by a partnership grant deed dated q , and recorded on r.

The development of the Project involves the rehabilitation of a motel that was once a chain hotel complex consisting of a one-story lobby, lounge and restaurant

building and three two-story guest room buildings in City 2, a rural unincorporated area in County. Since s, when the motel operation was closed down and abandoned, the buildings on the property have been vacant and uninhabited. Over the years, the property gradually deteriorated until the buildings became mere shells with no doors or windows in place. Trespassers had free access to the buildings, which they vandalized and defaced with graffiti. The Project has been uninhabited for more than 10 years.

Partnership specifically represents the following:

a. Partnership acquired the four buildings that comprise the Project by purchase (as defined in § 179(d)(2)).

b. The Project was not previously placed in service by Partnership or by a person who was a related person (as defined in § 42(d)(2)(D)(iii)(II)) with respect to Partnership as of the time the Project was last placed in service.

c. To the best of the knowledge of Partnership or Partnership's representative, there have been no nonqualified substantial improvements to the Project since it was last placed in service in t.

d. The Project is not currently fit to be inhabited and has been uninhabited since u.

e. A certificate of occupancy will be obtained from County only upon the completion of the Project.

f. To the best of the knowledge of Partnership or Partnership's representative, no prior owner of the Project was allowed a low-income housing tax credit under § 42 for the Project.

g. To the best of the knowledge of Partnership or Partnership's representative, the owners of the Project immediately prior to Partnership did not take depreciation deductions for the Project.

h. That prior to the acquisition of the Project by Partnership on i, the Project was last placed in service on or about v, when LP4 acquired the Project.

i. That from the date the Project was acquired by LP3 on w, until the date the Project was acquired by Partnership on i, the Project was not used for any function, and was not ready and available for use for any specific function.

j. Partnership will pay or incur amounts chargeable to the capital account for the rehabilitation of the Project's buildings allocable to one or more low-income units.

k. Partnership will make expenditures during a 24-month period and such expenditures will equal the greater of 10% of the adjusted basis of the Project's buildings, or an average of $3,000 per low-income unit.

l. The Project will be operated as affordable residential rental property for seniors from the time it is placed in service.

m. Partnership will complete the rehabilitation of the Project's buildings and will be eligible for the low-income housing credit under § 42.

n. All other terms and conditions of § 42 and related sections will be met.

RULING REQUESTED:

A ruling is requested that the acquisition of the Project by Partnership be determined to be in conformance with the 10-year holding period requirement in § 42(d)(2)(B)(ii).

LAW AND ANALYSIS:

Section 38 provides for a general business credit 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 § 42(a).

Section 42(a) provides that, for purposes of section 38, the amount of the low-income housing credit determined under this section 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.

In the case of any qualified low-income building placed in service by the taxpayer after 1987, § 42(b)(1) 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, and (ii) 30 percent of the qualified basis of existing buildings, and of new buildings that are federally subsidized for the taxable year. Section 42(i)(4) defines a new building as any building the original use of which begins with the taxpayer. Section 42(i)(5) defines an existing building as any building that is not a new building.

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 – (i) the applicable fraction

(determined as of the close of such taxable year) of (ii) the eligible basis of such building (determined under § 42(d)(5)).

Section 42(d)(2)(A) provides that for purposes of § 42, the eligible basis of an existing building is (i) in the case of a building meeting the requirements of § 42(d)(2)(B), its adjusted basis as of the close of the first taxable year of the credit period, and (ii) zero in any other case. The requirements of § 42(d)(2)(B) are met if:

(i) the building is acquired by purchase (as defined in § 179(d)(2)),
(ii) there is a period of at least 10 years between the date of its acquisition by the taxpayer and the later of --
(I) the date the building was last placed in service, or
(II) the date of the most recent nonqualified substantial improvement of the building,
(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 previously placed in service, and
(iv) except as otherwise provided in § 42(f)(5), a credit is allowable under §42(a) by reason of §42(e) with respect to the building.

Section 42(d)(2)(D)(i)(I) defines “nonqualified substantial improvement” to mean any substantial improvement if § 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) was elected with respect to such improvement or § 168 (as in effect on the day before the date of the Tax Reform Act of 1986) applied to such improvement. Under § 42(d)(2)(D)(i)(II) the date of a substantial improvement is the last day of the 24-month period under § 42(d)(2)(D)(i)(III). Section § 42(d)(2)(D)(i)(III) defines a “substantial improvement” to be the improvements added to the capital account of a building during any 24-month period, but only if the sum of the amounts added to the account during this period equals or exceeds 25 percent of the adjusted basis of the building (determined without regard to §§ 1016(a)(2) and (3)) as of the first day of the period.

Section 42(d)(2)(D)(ii)(I) provides that for purposes of determining under § 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 where the basis of the building in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of the building in the hands of the person from whom acquired.

Section 1.167(a)-11(e)(1)(i) of the Income Tax Regulations provides that property is first placed in service on the date that it is first placed in a condition or state of readiness and availability for a specifically assigned function, whether in a trade or business, in the production of income, in a tax-exempt activity, or in a personal activity.

Notice 88-116, 1988-2 C.B. 449, 450, provides that the placed-in-service date for a new or existing building used as residential rental property is the date on which the building is ready and available for its specifically assigned function, i.e., the date on which the first unit in the building is certified as being suitable for occupancy in accordance with state or local law. Under Notice 88-116, a building may be placed in service even though the rental units in the building are not currently occupied by low-income tenants.

Revenue Ruling 91-38, 1991-2 C.B. 3, 5, provides that, in general, a transfer of [low-income housing] 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.

Section 1.46-3(d)(1) provides that for purposes of the § 38 credit, property shall be considered placed in service in the earlier of the following taxable years:

> (i) The taxable year that, under the taxpayer's depreciation practice, the period for depreciation with respect to such property begins; or
> (ii) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function, whether in a trade or business, in the production of income, in a tax-exempt activity, or in a personal activity.

Partnership's specific ruling request requires the application of the above facts to the10-year holding period requirement of § 42(d)(2)(B)(ii). Section 42(d)(2)(B)(ii) provides that there be at least 10 years between the date of an existing building's acquisition by a taxpayer and the later of (i) the date the building was last placed in service, or (ii) the date of the most recent nonqualified substantial improvement of the building.

Under the represented facts, Partnership acquired the Project on i. Partnership specifically stipulates that the Project was last placed in service when LP4 acquired the Project in t. Partnership also represents that, to the best of the knowledge of Partnership or Partnership's representative, there have been no nonqualified substantial improvements to the Project since it was last placed in service in t. Thus, based upon Partnership's factual representations and specific stipulation, a period of 10 years exists between the date the Partnership acquired the Project and (1) the date the Project was last placed in service, and (2) the date of the most recent nonqualified substantial improvement to the Project.

CONCLUSION:

Accordingly, based solely on Partnerships's representation's of fact and relevant law as set forth above, we conclude that the acquisition of the Project by Partnership is in conformance with the 10-year holding period requirement of § 42(d)(2)(B)(ii).

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 credit under § 42.

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

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

Harold E. Burghart
Assistant to the Branch Chief,
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Office of Assistant Chief Counsel
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Enclosure: 6110 copy