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Person to Contact:

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Date:

March 7, 2000

Legend:

Partnership =

State =

City =

Agency =

a =

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Dear :

This letter responds to Partnership's authorized representative's letter dated September 28, 1999, and subsequent correspondence, submitted on behalf of Partnership, requesting a private letter ruling pertaining to the low-income housing tax credit under § 42 of the Internal Revenue Code. We were asked to rule that, for purposes of § 42(h)(4)(B), the proceeds of tax-exempt bonds subject to the volume cap under § 146 include investment earnings from the temporary investment of the sale proceeds of such bonds.

Partnership has made the following representations:

FACTS:

Partnership is a State limited partnership which was formed to develop and operate a low-income housing project (the "Project") in City.

In a, Agency issued tax-exempt bonds (the "Bonds") which are subject to the volume cap imposed by § 146 to finance the debt portion of the Project. The original face amount of the Bonds was \$b, and they were issued at par.

Originally, Partnership's budget for the Project, as approved by Agency in connection with the issuance of the Bonds, showed an estimated aggregate basis of \$c for the buildings and the land making up the Project, to be primarily financed by the Bonds. The face amount of the Bonds constituted approximately d percent of the aggregate basis of \$c for the buildings and the land making up the Project.

However, Partnership has revised its earlier estimate of projected aggregate basis for the buildings and the land making up the Project from \$c to \$e because of the bankruptcy or nonperformance of some subcontractors which required that other subcontractors be hired at short notice at a premium price, a sharp increase in drywall costs, and similar factors. Accordingly, the face amount of the Bonds will constitute less than 50 percent of the aggregate basis of \$e of the buildings and land making up the Project.

Partnership estimates that there will be approximately \$f in investment earnings from the temporary investment of the sale proceeds of the Bonds that accrue through the date the Project is placed in service (net of any arbitrage rebate under § 148).

RULING REQUESTED:

For purposes of § 42(h)(4)(B), Partnership may include as part of the proceeds of the Bonds the investment proceeds from the investment of the sale proceeds of such bonds that accrue during the project period (net of rebate amounts attributable to the project period).

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.

Section 1.42-1T(f)(1) of the Income Tax Regulations provides that no housing credit allocation is required in order to claim a credit under § 42 with respect to the entire qualified basis (as defined in § 42(c)) of a qualified low-income building if [50] percent or more of the aggregate basis of the building and land on which the building is located is financed with the proceeds of tax-exempt bonds which are taken into account for purposes of the volume cap under § 146.

Section 1.141-1(b) defines “proceeds” for purposes of § 141 as the sale proceeds of an issue (other than those sale proceeds used to retire bonds on the issue that are not deposited in a reasonably required reserve or replacement fund). For this purpose, proceeds also include any investment proceeds from investments that accrue during the project period (net of rebate amounts attributable to the project period). Section 1.141-1(b) defines “project period” as the period beginning on the issue date and ending on the date that the project is placed in service.

Section 1.148-1(b) defines “sale proceeds” as any amounts actually or constructively received from the sale of the issue, including amounts used to pay underwriters’ discount or compensation and accrued interest other than pre-issuance accrued interest.

Section 1.148-1(b) defines “investment proceeds” as any amounts actually or constructively received from investing proceeds of an issue.

Based on the relevant law as set forth above, the term “proceeds” in § 1.42-1T(f)(1) includes any investment proceeds from investment of the sale proceeds that accrue during the project period (net of rebate amounts attributable to the project period).

In the present case, Partnership represents that there will be approximately \$1 in investment earnings from the temporary investment of the sale proceeds of the Bonds that accrue through the date the Project is placed in service (net of any arbitrage rebate under § 148). Accordingly, for purposes of § 42(h)(4)(B), the investment proceeds from the investment of the sale proceeds of the Bonds that accrue during the project period (net of rebate amounts attributable to the project period) are included as part of Partnership’s proceeds of the Bonds.

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, 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.

In accordance with the power of attorney filed with this request, we are sending a copy of this letter ruling to Partnership’s first 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
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Enclosure: 6110 copy