Internal Revenue Service

Number: **200235018**
Release Date: 8/30/2002
Index No.: 42.04-07

Department of the Treasury
Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:5 — PLR-110088-02
Date:
May 29,2002

Legend:

Taxpayer =

Old Partnership =

New Partnership =

City 1 =

City 2 -

State =

Address 1 =

Address 2 =

Year 1 =

a =

b =

c =

d =

e =

f =

Dear :

This letter responds to your letter dated February 13, 2002, and subsequent correspondence, submitted on behalf of Taxpayer concerning your request for a private letter ruling pertaining to § 42(d)(2)(B)(ii) of the Internal Revenue Code. The Internal Revenue Service Office that will have examination jurisdiction over the Taxpayer and New Partnership is located in City 1. The relevant facts as represented in these submissions are set forth below.

FACTS:

Taxpayer is a State limited partnership formed on a to acquire, hold, and sell real estate that will be used for the purpose of providing low and moderate income housing and to engage in all activities related thereto.

Old Partnership was formed as a State limited partnership on b. Old Partnership acquired a multi-building project located in City 2. Buildings comprising the project (referred to in the aggregate as "project buildings") are located at Address 1 and Address 2. Address 1 buildings are numbered d. Address 2 buildings are numbered e. The sellers of the project buildings to Old Partnership received a purchase-money note as payment for the project. Due to certain restrictive covenants under a pre-existing mortgage secured by the project buildings, the sellers could not record a security interest in the project buildings. However, the sellers secured the purchase-money indebtedness with 100% of the partnership interests in Old Partnership.

Following the date in Year 1 that Old Partnership acquired the project buildings and prior to c, there were various transfers of interests in Old Partnership. As a result of one of these transfers, Old Partnership made a § 754 election and the purchasers of the interests in Old Partnership received § 743(b) basis adjustments. These transfers did not result in a disposition by Old Partnership of any of the project buildings or in a termination of Old Partnership under § 708(b)(1)(B).

The loans secured by interests in Old Partnership that were due to the sellers of the project buildings (or their successors in interest to the purchase money note as of c-- hereinafter referred to as the "note holders") became in default. A foreclosure on c resulted in 100% of the interests in Old Partnership transferring to the note holders and an affiliate, causing Old Partnership to terminate under § 708(b)(1)(B), and New Partnership to arise. Other than the note holder's relationship to Old Partnership as a

creditor, the note holders and the affiliate are unrelated for income tax purposes to the Old Partnership and its partners.

There was a period of more than 10 years between Year 1, the year that Old Partnership acquired and placed in service the project buildings, and c. In addition, no nonqualfied substantial improvements (as defined in § 42(d)(2)(D)(i)) were made to any project buildings during this time period.

On f, a date that is less than 12 months from c, New Partnership sold the project buildings to Taxpayer in a fully taxable transaction. Taxpayer and New Partnership are unrelated parties. Taxpayer seeks to qualify the acquisition and rehabilitation costs of project buildings for low-income housing tax credits under § 42.

RULING REQUESTED:

Taxpayer requests the Service to rule that the foreclosure of the purchase-money debt (secured by 100% of the partnership interests in Old Partnership) and subsequent sale of the project buildings by New Partnership to Taxpayer satisfies the special rule for certain transfers under § 42(d)(2)(D)(ii)(IV).

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 ten-year compliance 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 the 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 new buildings that are federally subsidized for the taxable year (30-percent present value credit).

For an existing building to qualify for the 30-percent present value credit, § 42(d)(2)(B)(ii) requires that there be a period of at least 10 years between the date of the building's acquisition by the taxpayer and the later of:

(1) The date of the building was last placed in service, or

(2) The date of most recent nonqualified substantial improvement of the building.

Section 42(d)(2)(D)(ii) provides special rules for certain transfers for purposes of determining under § 42(d)(2)(B)(ii) when a building was last placed in service. Pursuant to § 42(d)(2)(D)(ii)(IV), there shall not be taken into account any placement in service by any person who acquired such building by foreclosure (or by instrument in lieu of foreclosure) of any purchase-money security interest held by such person if the requirements of § 42(d)(2)(B)(ii) are met with respect to the placement in service by such person and such building is resold within12 months after the date such building is placed in service by such person after such foreclosure.

Under the present facts as represented, New Partnership (comprised of note holders and affiliate partners) became the owners of project buildings when note holders and affiliate foreclosed on the building by acquiring 100% of the partnership interests in Old Partnership. Within 12 months of the date the project buildings were placed in service by New Partnership as a result of the foreclosure sale, New Partnership sold the project buildings to Taxpayer. There has been a period of more than 10 years between c, the date of the foreclosure, and the date the project buildings were last placed in service or the date of the most recent nonqualified substantial improvement of the project buildings. Further, there has been a period of more than 10 years (not taking into account the foreclosure on c) between f, the date that New Partnership sold the project buildings to Taxpayer, and the date the project buildings were last placed in service or the date of the most recent nonqualified substantial improvement of the project buildings.

Accordingly, based solely on the facts and law as set forth above, we rule that the foreclosure of the purchase-money debt (secured by 100% of the partnership interests in Old Partnership) and subsequent sale of the project buildings by New Partnership to Taxpayer satisfy the special rules for certain transfers under § 42(d)(2)(D)(ii)(IV), and that therefore the placement in service of the project buildings by New Partnership resulting from the foreclosure is not taken into account for purposes of § 42(d)(2)(B)(ii).

No opinion is expressed or implied regarding the application of any other provisions of the Code or Income Tax Regulations. Specifically, we offer no opinion, either expressly or implicitly, on whether the Project qualifies for the low-income housing tax 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. In addition, a copy of this letter is being sent to the Chief, Examination Division in District.

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,
Susan Reaman
Chief, Branch 5
Office of Associate Chief Counsel
(Passthroughs and Special Industries)