Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:TEGE:EOEG:TEB-PLR-113645-02
Date:
October 2, 2002

Re:

LEGEND

Issuer	=
County	=
State	=
Bonds	=
Original Issue Date	=
Borrower	=
Original Maturity Date	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=

Dear :

This is in response to your request for a private letter ruling regarding the applicable qualified project period for the Refunding Bonds (hereinafter defined).

FACTS

The Issuer is a housing authority that issues bonds on behalf of the County, a political subdivision of the State. On Original Issue Date, the Issuer issued the Bonds to finance the construction of a multifamily residential housing project (the "Project") owned by Borrower. The final maturity date of the Bonds is the Original Maturity Date (a term of approximately 20 years). The Bonds were issued under the Internal Revenue Code of 1954 (the "1954 Code"), which required, among other things, that 20% or more of the units in the Project be occupied by individuals of low or moderate income (the “Income Requirement”) for the qualified project period. *See* §§ 103(b)(4)(A), 103(b)(12)(B)-(C).

The qualified project period for the Bonds began on Date 1, the day that 10% of the units in the Project were first occupied. The first unit of the Project was rented on Date 2, and 50% of the units in the Project were first occupied on Date 3. The qualified project period for the Bonds ended on Date 4, the date which is 10 years after the date on which 50% of the units in the Project were occupied. Date 4 is later than the date which is a qualified number (within the meaning of § 103(b)(12)) of days after the date on which any of the units in the Project were first occupied. The Project does not receive any assistance under § 8 of the United States Housing Act of 1937 (the “Housing Act”).

During the qualified project period for the Bonds, the Project was continuously in compliance with the Income Requirement. However, after the qualified project period ended, the Issuer made no effort to determine whether or not the Project continued to meet the Income Requirement.

Issuer and Borrower now contemplate amending the documents relating to the Bonds, including an extension of the maturity date to Date 5. This amendment will cause a “reissuance” of the Bonds for federal income tax purposes, which is treated as a deemed issuance of new bonds (the "Refunding Bonds") and a current refunding of the Bonds by the Refunding Bonds.

The Refunding Bonds will satisfy the transition rules for current refundings as set forth in § 1313(a) of the Tax Reform Act of 1986, 1986-3 C.B. (Vol. I) 1, 578 (the "1986 Act"), including the requirements that: (1) the amount of the Refunding Bonds does not exceed the outstanding amount of the Bonds; and (2) the average maturity of the Refunding Bonds does not exceed 120% of the average reasonably expected economic life of the Project (determined under § 147(b) of the Internal Revenue Code of 1986 (the “1986 Code”)).

The Issuer represents that the Project will be in compliance with the Income Requirement on the issue date of the Refunding Bonds. The documents relating to the Refunding Bonds will require that the Income Requirement be satisfied for the entire term of the Refunding Bonds.

LAW AND ANALYSIS

Section 1313(a) of the 1986 Act provides, in general, that the amendments made by § 1301 of the 1986 Act shall not apply to any bond the proceeds of which are used exclusively to refund (other than to advance refund) a qualified bond (*e.g.*, a bond issued before August 16, 1986) if (A) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and (B)(i) the average maturity of the issue of which the refunding bond is a part does not exceed 120% of the average reasonably expected economic life of the facilities being financed with the net proceeds of such issue (determined under § 147(b) of the 1986 Code), or (ii) the refunding bond has a maturity date not later than the date 17 years after the date the qualified bond was issued.

Section 103(a) of the 1954 Code generally provides that gross income does not include interest on the obligations of a state or political subdivision of a state. Under § 103(b), interest on an industrial development bond is not excluded from gross income unless the bond is issued for an exempt activity. Under § 103(b)(4)(A), the proceeds of tax-exempt bonds may be used to provide residential rental property if at all times during the qualified project period the project meets the Income Requirement.

Section 103(b)(12)(B) defines the qualified project period for residential rental property as the period beginning on the first day on which 10% of the units in the project are occupied and ending on the later of (i) the date which is 10 years after the date on which 50% of the units in the project are occupied, (ii) the date which is a qualified number of days after the date on which any of the units in the project are occupied, or (iii) the date on which any assistance provided with respect to the project under § 8 of the Housing Act terminates. For this purpose, the term "qualified number" means, with respect to an obligation issued for residential rental property, 50% of the number of days which comprise the term of the obligation with the longest maturity.

Section 1.103-8(b)(7) of the Income Tax Regulations, issued under the 1954 Code, restates the definition of the qualified project period under § 103(b)(12)(B), but provides that the qualified project period begins on the later of the first day on which at least 10% of the units in the project are first occupied or the issue date of an obligation described in § 103(b)(4)(A). The regulations further provide that in the case of a refunding issue, the longest maturity is equal to the sum of the period the prior issue was outstanding and the longest term of any refunding obligations.

Based on Issuer's representations, the Refunding Bonds will meet the transition rule set forth in § 1313(a) of the 1986 Act. Thus, the Refunding Bonds will be subject to § 103(b)(4)(A) and § 103(b)(12)(B) of the 1954 Code. Under § 103(b)(4)(A), a residential rental project must meet the Income Requirement at all times during the qualified project period.

Section 1.103-8(b)(7) defines the beginning of the qualified project period as the later of the issue date of bonds under § 103(b)(4)(A) or the date on which 10% of the units of a project are first occupied. This marks the date after which the Income Requirement must be met for the applicable period of time. The amount of time in the qualified project period is not dependent on this date, generally being either 10 years after the date 50% of the units are occupied or, if longer, the qualified number of days after the first occupancy. When refunding bonds are issued to currently refund prior bonds, the qualified project period must be redetermined to calculate whether a longer qualified project period results.

In this case, the term of the Refunding Bonds is longer than the term of the Bonds. As a result, the qualified project period for the Refunding Bonds will be longer than the qualified project period for the Bonds. The qualified project period for the Bonds began on Date 1, the date of 10% occupancy and ended on Date 4, the date 10 years after 50% of the units in the Project were occupied and prior to the issue date of the Refunding Bonds. Because of the maturity extension, the end of the qualified project period for the Refunding Bonds will be based on the qualified number of days after the date the Project was first occupied.

It is clear from the applicable provisions of the 1954 that the subsidy inherent in tax-exempt bonds for residential rental housing is only justified if the facility built with proceeds of the bonds meets the Income Requirement for the specified period of time. Although the Income Requirement must be satisfied at all times during the qualified project period, this case requires the determination of the qualified project period for a refunding issue when the term of such issue causes an extension of the qualified project period after the qualified project period for the prior issue terminated.

We believe that as defined in the 1954 Code, the qualified project period determines the amount of the time during which the Income Requirement must be satisfied. In the situation, as here, where the qualified project period ended with respect to an issue, but then is extended due to the term of a refunding issue, compliance with the Income Requirement need not be continuous between the two issues. To conclude otherwise would be contrary to the 1954 Code and the 1986 Act. Section 103(b)(12)(B) of the 1954 Code clearly contemplates that the qualified project period for an issue may terminate before the issue matures. In addition, the 1954 Code and the 1986 Act both permit the issuance of refunding bonds and extensions of maturity (subject to limitations based on the average reasonably expected economic life of the financed assets), which may cause an extension of the qualified project period. Read together, where the qualified project period for a prior issue ends before the issue date of a refunding issue, it is appropriate to permit a refunding that extends the qualified project period if the amount of time (beginning on the issue date of the refunding issue) during which the Income Requirement is continuously satisfied, when added to the amount of time during which the prior issue continuously satisfied the Income Requirement (not less than the qualified project period for such issue), is not less than the amount of time in the qualified project period for the refunding issue under § 103(b)(12)(B).

In this case, the total amount of time in the qualified project period for the Refunding Bonds is equal to the amount of time between Date 1 (10% occupancy date) and a date that is determined by adding to Date 2 (initial occupancy date) the number of days that is 50% of the sum of the number of days the Bonds were outstanding plus the number of days between the issue date of the Refunding Bonds and Date 5 (the longest maturity). A portion of this time is represented by the qualified project period for the Bonds (*i.e.*, from Date 1 to Date 4). The remaining portion of qualified project period will be satisfied continuously beginning on the issue date of the Refunding Bonds.

CONCLUSION

Based on the facts and representations submitted, we conclude that the Refunding Bonds will be in compliance with the Income Requirement for the qualified project period to the extent that the amount of time (beginning on the issue date of the Refunding Bonds) during which the Income Requirement is continuously satisfied, when added to the amount of time during which the prior issue continuously satisfied the Income Requirement (not less than the qualified project period for such issue), is not less than the amount of time in the qualified project period for the Refunding Bonds under § 103(b)(12)(B).

These conclusions are based upon information and representations submitted by the Issuer and under a penalties of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of this request for rulings, it is subject to verification on examination.

Except as specifically ruled above, no opinion is expressed concerning this transaction under any other provision of the 1954 Code or the 1986 Code. Specifically, no opinion is expressed concerning whether interest on the Bonds or the Refunding Bonds is excludable from gross income under § 103(a) of the 1954 Code or 1986 Code.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the 1986 Code provides that it may not be used or cited as precedent.

Sincerely yours,
Assistant Chief Counsel
(Exempt Organizations/Employment
Tax/Government Entities)

By:______________________________
Timothy L. Jones
Senior Counsel
Tax Exempt Bond Branch