Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:5 – PLR-141204-02
Date:
November 18, 2002

LEGEND:

Taxpayer =

State =

Building =

Place =

X =

Date 1 =

Date 2 =

Dear :

This letter responds to a letter dated July 15, 2002, submitted on behalf of Taxpayer, requesting a private letter ruling regarding § 42 of the Internal Revenue Code.

Taxpayer represents the following facts:

Taxpayer is a State limited partnership. Taxpayer was formed to purchase, rehabilitate, and operate Building located in Place as a qualified low-income building eligible for the low-income housing credit under § 42.

Prior to the purchase of Building by Taxpayer, the following events occurred. X, a State limited liability company, for and in consideration of dissolution, conveyed

Building to its members under a quit claim deed dated Date 1. The members acquired a new placed in service date for Building. One month later, realizing that a new placed in service date would prohibit Building from eligibility for the low-income housing tax credit under § 42, the members reconveyed Building to X under a rescission of quit claim deed dated Date 2.

Taxpayer represents that the rescission is a valid rescission under State law, that the quit claim deed and the rescission of quit claim deed occurred within the same taxable year of the parties, and that the parties were fully restored to the positions they were in immediately prior to the quit claim deed.

Section 42(a) provides that the amount of the low-income housing credit for any taxable year in the credit period is an amount equal to the applicable percentage of the qualified basis of each qualified low-income 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 the applicable fraction (determined as of the close of the taxable year) of the eligible basis of the building.

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

One of the requirements of § 42(d)(2)(B) is that there be a period of at least 10 years between the date of acquisition of the building by the taxpayer and the later of the date the building was last placed in service or the date of the most recent nonqualified substantial improvement of the building. Section 42(d)(2)(B)(ii).

Rev. Rul. 80-58, 1980-1 C.B. 181, states that the legal concept of rescission refers to the abrogation, canceling, or voiding of a contract that has the effect of releasing the contracting parties from further obligations to each other and restoring the parties to the relative positions that they would have occupied had no contract been made. A rescission may be effected by mutual agreement of the parties.

Rev. Rul. 80-58 also states that the annual accounting concept requires that one must look at the transaction on an annual basis using the facts as they exist at the end of the year. That is, each taxable year is a separate unit for tax accounting purposes.

Rev. Rul. 80-58 concludes that a sale is disregarded for federal income tax purposes where the sale is rescinded within the same taxable year and the parties are placed in the same positions as they were prior to the sale.

In the present case, Taxpayer represents that the rescission is a valid rescission under State law, that the quit claim deed and the rescission of quit claim deed occurred within the same taxable year of the parties, and that the parties were fully restored to the positions they were in immediately prior to the quit claim deed.

Accordingly, based solely on the representations and the relevant law set forth above, we conclude that the quit claim deed dated Date 1 followed by the rescission of quit claim deed dated Date 2 did not cause Building to get a new placed in service date 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 express no opinion on whether any other requirement of § 42 is met or whether the rescission is a valid rescission.

According to the power of attorney on file with the ruling request, a copy of this letter is being sent to Taxpayer.

This letter 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,

/s/ Harold E. Burghart

HAROLD E. BURGHART
Senior Advisor, Branch 5
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures:
Copy of letter
Copy for section 6110 purposes