Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

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Date:
October 12, 2006

LEGEND

Issuer =

State =

Original Bonds =

Third Refunding Bonds =

Project =

Borrower =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This is in response to your request for a private letter ruling that the final stated maturity date of the Third Refunding Bonds (defined below) issued with respect to the Project (defined below) should be used in calculating the qualified number of days for purposes of determining the qualified project period under §103(b)(12)(B) of the Internal Revenue Code of 1954 (the “1954 Code”) and the regulations thereunder.

FACTS

The Issuer is a political subdivision of State and the issuer of the bonds described herein. On Date 1, the Issuer issued the Original Bonds and lent the proceeds to the Borrower to finance the construction of a multifamily residential rental project (the “Project”). The Original Bonds were issued pursuant to §103(b)(4)(A) and §103(b)(12) of the 1954 Code, which requires, 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”) at all times during the qualified project period. More than 10 years have passed since 50% of the units in the Project were first occupied. The Project was not provided assistance under section 8 of the United States Housing Act of 1937.

The Original Bonds were reissued in a transaction that was treated as a current refunding for federal income tax purposes on Date 2 (the “First Refunding Bonds”). The First Refunding Bonds were themselves refunded in a current refunding on Date 3 (the “Second Refunding Bonds”). The Second Refunding Bonds have a final stated maturity date of Date 4.

The Issuer and Borrower now contemplate amending the documents relating to the Second Refunding Bonds, including a shortening of the final stated maturity from Date 4 to Date 5. The amendments will cause a reissuance of the Second Refunding Bonds for federal income tax purposes, which will be treated as a deemed issuance of new bonds (the “Third Refunding Bonds”) that currently refund the Second Refunding Bonds.

Both the First Refunding Bonds and the Second Refunding Bonds satisfied the transitional 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”). The Third Refunding Bonds will similarly satisfy these transition rules. The Issuer represents that the Project has been and currently is in compliance with the requirements for tax-exempt bonds under the 1954 Code and the applicable provisions of the Internal Revenue Code of 1986 (the “1986 Code”), and that the Project will be maintained as rental property until the Third Refunding Bonds are no longer outstanding.

LAW AND ANALYSIS

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 facility. 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 Requirements.

Section 103(b)(12)(B) of the 1954 Code 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 section 8 of the United States Housing Act of 1937 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)(ii) of the Income Tax Regulations, issued under the 1954 Code, restates the definition of the qualified project period under §103(b)(12)(B), and 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), and ends on the later of the date (a) which is 10 years after the date on which at least 50% of the units in the project are first occupied, (b) which is a qualified number of days after the date on which any of the units in the project is first occupied, or (c) on which any assistance provided under section 8 of the United States Housing Act of 1937 terminates. This regulation further provides that the term “qualified number of days” means 50% of the total number of days comprising the term of the obligation with the longest maturity in the issue used to provide the project. 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 the Issuer’s representations, the Third Refunding Bonds will meet the transition rule set forth in §1313(a) of the 1986 Act. Thus, the Third 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 Requirements at all times during the qualified project period, as defined in §103(b)(12)(B) and §1.103-8(b)(7).

With respect to the determination of the qualified project period, the Issuer has represented that more than 10 years have passed since 50% of the units in the Project were first occupied, and that the Project was not provided assistance under section 8 of the United States Housing Act of 1937. The issue raised in this case is how to properly determine the date which is a qualified number of days after the date on which any of the units in the Project are first occupied for purposes of determining the qualified project period under §103(b)(12)(B) and §1.103-8(b)(7).

As the regulations indicate, the term “qualified number of days” means 50% of the total number of days comprising the term of the obligation with the longest maturity in the issue used to provide the project; in the case of a refunding of such an issue, the longest maturity is equal to the sum of the period the prior issue was outstanding and the longest term of any refunding obligation. In this case, the Third Refunding Bonds are a refunding obligation of bonds used to provide the Project, and the final stated maturity of the Third Refunding Bonds (Date 5) is the longest term of this refunding obligation. While this date is earlier than the date the Second Refunding Bonds would have matured had they been left outstanding, our answer does not change. Thus, Date 5 is the appropriate date to use as the longest term of any refunding obligation for purposes of calculating the qualified number of days with respect to the Third Refunding Bonds. Accordingly, the qualified number of days in this case is 50% of the total number of days that include the period the Original Bonds and the First Refunding Bonds were outstanding, the period the Second Refunding Bonds will be outstanding, and the period from the date of issue of the Third Refunding Bonds to Date 5. This conclusion will result in the qualified project period ending sooner than it would have otherwise ended had the Second Refunding Bonds remained outstanding.

CONCLUSION

Based on the facts and representations submitted, we conclude that the final stated maturity date of the Third Refunding Bonds (Date 5) should be used in calculating the qualified number of days for purposes of determining the qualified project period under §103(b)(12)(B) of the 1954 Code and the regulations thereunder.

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, the First Refunding Bonds, the Second Refunding Bonds or the Third Refunding Bonds is excludable from gross income under § 103(a) of the 1954 Code or the 1986 Code.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Assistant Chief Counsel
(Exempt Organizations/Employment
Tax/Governmental Entities)

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

Enclosure:
Copy for § 6110 purposes