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Person To Contact:
, ID No.

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Date:
February 11, 2008

LEGEND:

Taxpayer =

General Partner =

Investor Limited Partner =

Organization =

State =
Location =
City =
Date 1 =
Date 2 =
a =
b =
c =
d =
e =
f =
g =
h =
i =
j =
k =
l =

Dear :

This letter responds to a letter July 13, 2007, submitted on behalf of Taxpayer by its authorized representatives, requesting a ruling under § 48 of the Internal Revenue Code (the Code).

The facts are represented as follows:

Taxpayer, a State limited partnership, was formed to provide affordable housing by acquiring, constructing, developing, repairing, improving, maintaining, operating, managing, and leasing a low-income housing project (the Project) in Location. The Project consists of a dwelling units in b residential buildings and c community buildings. The Project was completed on Date 1, and Taxpayer expects that the Project will be eligible for the low-income housing credit under § 42 the Code.

The total cost of the Project, excluding any § 48 energy property, is estimated to be d, and is funded by: (1) a construction loan in the amount of e that is funded by the issuance and sale of multifamily housing revenue bonds (the bond loan) by State; (2) a loan from City in the amount of f; (3) a loan of g from the seller of the Project; (4) equity contributions from the General Partner and Investor Limited Partner totaling approximately h; and (5) deferral payments of i. After completion of the Project, the bond loan will be repaid from a permanent loan in the amount of j from Organization, and additional equity contributions from the Investor Limited Partner. Taxpayer represents that the bond loan should be considered a loan of the proceeds of private activity bonds (within the meaning of § 141 of the Code) the interest of which is exempt under § 103 of the Code, but that none of the other financing for the Project falls within § 48(a)(4) as subsidized energy financing or proceeds of a private activity bond.

Taxpayer represents that at the time the land was acquired and the financing was obtained for the Project, the plans and specifications for the Project contemplated energy solely from conventional sources, and, accordingly, the Project budget included only the costs of conventional energy systems. However, Taxpayer was aware of using alternative energy sources and wanted to add a solar energy system (energy system) to the Project at a future date. Taxpayer requested that the bond loan documents allow Taxpayer to add an energy system to the Project. The bond loan documents contain language authorizing the addition of an energy system provided that the energy system is redundant and is not financed with bond loan proceeds. In addition, the energy system, if installed, would not be collateral for the bond loan. Taxpayer subsequently decided to install an energy system in the Project, and the energy system was installed by Date 2. Taxpayer represents that the energy system is redundant and is not a real estate fixture, and Taxpayer anticipates the energy system will be eligible under § 48 of the Code. The estimated cost of the energy system is k (with a net cost of l). Taxpayer represents that bond loan proceeds were not used to finance the energy property.

Taxpayer requests a ruling that for purposes of § 48(a)(4) the basis of the energy property is not subject to reduction as a result of the financing of the Project by a bond loan.

Section 48(a)(1) provides that, in general, for purposes of § 46, except as provided in § 48(c)(1)(B) and (2)(B), the energy credit for any taxable year is the energy percentage of the basis of each energy property placed in service during the taxable year.

Section 48(a)(2)(i) provides that, in general, the energy percentage is 30 percent in the case of: (i) qualified fuel cell property; (ii) energy property described in § 48(a)(3)(A)(i) but only with respect to periods ending before January 1, 2009; and (iii) energy property described in § 48(a)(3)(A)(ii).

Section 48(a)(3) provides, in relevant part, that the term "energy property" means any property which is: (i) equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, excepting property used to generate energy for the purposes of heating a swimming pool; (ii) equipment which uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight but only with respect to periods ending before January 1, 2009; (iii) equipment used to produce, distribute, or use energy derived from a geothermal deposit (within the meaning of § 613(e)(2)), but only, in the case of electricity generated by geothermal power, up to (but not including) the electrical transmission stage; or (iv) qualified fuel cell property or qualified microturbine property.

Section 48(a)(4) provides, in relevant part, for a reduction of basis for purposes of applying the energy percentage to any property, if the property is financed in whole or in part by: (i) subsidized energy financing, or (ii) the proceeds of a private activity bond (within the meaning of § 141) the interest on which is exempt from tax under § 103. The amount taken into account as the basis of the property can not exceed the amount which (but for § 48(a)(4)) would be so taken into account multiplied by the fraction determined under § 48(a)(4)(B). For purposes of § 48(a)(4)(A), the fraction determined under § 48(a)(4)(B) is 1 reduced by a fraction: (i) the numerator of which is that portion of the basis of the property which is allocable to such financing or proceeds, and (ii) the denominator of which is the basis of the property.

Applying the above standards to the facts and representations submitted and subject to the limitations below, we conclude that that Taxpayer is not required under § 48(a)(4) to make an adjustment to the basis of the energy property because the bond loan documents contain language prohibiting the bond loan proceeds from being used as financing for the energy system, bond loan proceeds were not used to finance the energy system, the energy system is redundant, and the energy system is not and cannot be used as collateral for the bond loan. Therefore, the energy system is not financed in whole or in part by the proceeds of a private activity bond (within the meaning of § 141) the interest of which is exempt from tax under § 103.

Except as specifically ruled upon above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above. Specifically, no opinion is expressed whether Taxpayer qualifies for the credit under § 42, or whether the energy property otherwise qualifies under § 48.

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

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.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representatives. A copy of this ruling must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Peter C. Friedman
Senior Technician Reviewer, Branch 6
(Passthroughs & Special Industries)