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Person To Contact:
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Telephone Number:

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Date:
September 06, 2011

In Re: Ruling Request

Legend:

Taxpayer =

State A =

Address =

X =

Y =

Z =

Housing Credit Agency =

Dear :

This letter responds to a letter dated March 24, 2011, and subsequent correspondence submitted by Taxpayer's authorized representatives on behalf of Taxpayer, requesting rulings under § 42 of the Internal Revenue Code.

The relevant facts as represented in Taxpayer's submissions are set forth below.

Facts:

Taxpayer, a State A limited partnership, constructed a housing project that consists of X townhouse buildings, each of which contains several townhouse units, and one club house. The project is located at Address. There are Y townhouse units in the project, and Z of those townhouse units are low-income residential rental units.

The main entrance to each townhouse unit is an outside door located at the front of the unit. Each unit has a garage. A tenant will lease a unit pursuant to a lease agreement that will specifically exclude the garage. A tenant can lease a unit's garage pursuant to a separate lease agreement. A tenant is not required to lease a garage to lease a unit. Taxpayer will not allow a tenant access to or use of the garage associated with the tenant's unit if the tenant chooses not to lease the garage. Alternative parking is available for all tenants in the project.

Regardless of whether any garages are rented, Taxpayer represents that it will not include in eligible basis costs associated with any of the garages in the project.

If a tenant does not lease a garage associated with the tenant's unit, then Taxpayer may rent the garage to another lessee for storage purposes. Taxpayer will provide access to the lessee through the main garage door, and Taxpayer will permanently close off any other point of access. Taxpayer will separately meter the electricity attributable to the garage, and the tenant will not pay this associated cost, unless the tenant also leases the garage. Taxpayer has informed the Housing Credit Agency responsible for the low-income housing tax credit program of its intended treatment of the garages so that the agency can consider the garage lease fees when determining the financial feasibility of the project under § 42(m).

Rulings Requested:

Taxpayer requests a ruling that adjusted basis of the garages is not includable in eligible basis under § 42(d)(1) and that the optional fee for access to and use of a garage is not includable in the computation of allowable rent under § 42(g)(2).

Law and Analysis:

Eligible Basis:

Section 42(a) provides the amount of the low-income housing credit for any taxable year in the credit period shall be an amount equal to the applicable percentage of the qualified basis of each qualified low-income building.

Section 42(c)(1) defines qualified basis of any qualified low-income building for any taxable year as an amount equal to the applicable fraction (determined as of the close of such taxable year) of the eligible basis of such building (determined under § 42(d)(5)).

Section 42(c)(2) defines "qualified low-income building" as any building which is part of a qualified low-income housing project at all times during the period beginning on the first day of the compliance period on which such building is part of such a project, and ending on the last day of the compliance period with respect to such building, and to which the amendments made by section 201(a) of the Tax Reform Act of 1986 apply.

Section 42(d)(1) defines the eligible basis of a new building as its adjusted basis as of the close of the first taxable year of the credit period.

Section 42(d)(4) states the adjusted basis is determined without regard to the adjusted basis of the property that is not residential rental property, except to the extent in § 42(d)(4)(B). Section 42(d)(4)(B) provides the adjusted basis shall take into account the adjusted basis of property (of a character subject to the allowance for depreciation) used in common areas or provided as comparable amenities to all residential units in such building.

The legislative history to the Tax Reform Act of 1986 (1986 Act) provides that the allocable cost of tenant facilities, such as swimming pools, other recreational facilities, and parking areas, may be included [in eligible basis] provided there is no separate fee for the use of these facilities and they are made available on a comparable basis to all tenants in the project. 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-90 (1986), 1986-3 (Vol. 4) C.B. 90.

The legislative history to the 1986 Act further provides that residential rental property may qualify for the credit even though a portion of the building in which the residential rental property units are located is used for a commercial use. No portion of the costs of such nonresidential rental property included in a project may be included in eligible basis. Congress intended that such a mixed-use facility be allocated according to any reasonable method that properly reflects the proportionate benefit to be derived, directly or indirectly, by the nonresidential rental property and the residential rental units. Id.

Based on Taxpayer's representations, the garages are neither residential rental property for purposes of § 42 nor are they considered as used in common areas or provided as comparable amenities to all residential units in any of the project buildings. Section 42(d)(4) excludes the adjusted basis of any property that is not residential rental property from eligible basis under § 42(d)(1). Therefore, eligible basis under § 42(d)(1) is determined without including the adjusted basis of the garages.

Gross Rent:

Section 42(g)(2) provides a residential unit is rent-restricted if the gross rent with respect to such unit does not exceed 30 percent of the imputed income limitation applicable to such unit.

Section 1.42-11(a) provides that any charges to low-income tenants for services that are not optional generally must be included in gross rent for purposes of § 42(g).

Section 1.42-11(b) provides a service is optional if payment for the service is not required as a condition of occupancy.

Based on Taxpayer's representations, the fee for access to and use of a garage is optional. Therefore, it is appropriate to exclude the optional fee charged for access to and use of a garage from the gross rent limitation in § 42(g)(2).

Accordingly, based solely on the representations and relevant law as set forth above, we conclude that the adjusted basis of the garages is not included in eligible basis under § 42(d)(1) and that Taxpayer's optional fee for access to and use of a garage is not included in the computation of allowable rent under § 42(g)(2).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied regarding whether the buildings in the project qualify for the low-income housing credit under § 42.

The rulings in this letter are directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that they may not be used or cited as precedent.

The rulings in this letter are based upon information and representations submitted by 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, a copy of this letter is being sent to Taxpayer's authorized legal representatives.

Sincerely yours,

Christopher J. Wilson
Senior Counsel, Branch 5
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)