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:

Refer Reply To:
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Date:
March 28, 2013

LEGEND:

Issuer =

Borrower =

Facility =

Principal =

Partnership =

Holding Company =

Bank A =

Bank B =

Date 1 =

Date 2 =

Date 3 =

Bonds =

New Bonds =

Dear :

This responds to your request for a ruling that notwithstanding the purchases on Date 1 and Date 3 (as described below) and the technical termination of Partnership under § 1.708-1(b)(2) of the Income Tax Regulations, all within six months of the date of the Refinancing (as described below), the issuance of the New Bonds is a refunding of the Bonds within the meaning of Treas. Reg. § 1.150-1(d)(1).

Facts and Representations

You make the following representations. Issuer is a governmental agency constituting a public benefit corporation authorized to issue bonds and responsible for providing low-income housing.

Borrower is a limited-liability company formed for the purpose of constructing and developing Facility, a multi-family rental housing development. For Federal income tax purposes, Borrower is a disregarded entity. Through several single-member limited liability companies that are disregarded for Federal income tax purposes, Principal (or New Principal, as described below) at all relevant times has owned all of the capital and profits interest in Borrower. At all relevant times, Partnership (or New Partnership, as described below) directly has owned percent of Principal.

Immediately prior to Date 1, Bank A and Bank B owned approximately percent of Partnership, and Holding Company owned approximately percent of Partnership. Third parties that include certain Partnership employees and officers unrelated to Bank A, Bank B, or Holding Company (the "Third Parties"), owned the remaining approximate percent of the capital and profits interest in Partnership.

On Date 1, Holding Company exercised an option to acquire half of the capital and profits interests in Partnership that had been owned by Bank A and Bank B (the "Date 1 Purchase"). Thus, after Date 1, Bank A and Bank B owned approximately percent and percent of the capital and profits interests in Partnership, respectively. Holding Company owned approximately percent of the capital and profits

interests in Partnership. The Third Parties continued to own the remaining approximate percent of the capital and profits interest in Partnership.

Facility is financed by a mortgage loan (the "Mortgage Loan") from Issuer to Borrower. The Bonds were issued by Issuer to provide a portion of the funding for the Mortgage Loan. Because Borrower is a disregarded entity for Federal income tax purposes, Principal is treated as the obligor on the Bonds. On Date 2, less than four months after Date 1, the Bonds were remarketed such that a reissuance occurred (the "Refinancing"). Borrower is the obligor on the reissued bonds (the "New Bonds") but because Borrower is a disregarded entity, Principal is treated as the obligor on the New Bonds. The proceeds of the New Bonds were used to pay the principal of the Bonds.

On Date 3, less than six months after Date 1, Holding Company acquired from Bank A and Bank B, respectively, their remaining percent and percent of the capital and profits interests in Partnership (the "Date 3 Purchase"). Thus, as of Date 3 Holding Company owned percent of Partnership, and the Third Parties owned the approximate percent of Partnership which remained. Neither Borrower nor Issuer had any control over the sales by Bank A and Bank B of their interests in Partnership.

Borrower represents that the Refinancing was not related to, or contingent in any way upon, the Date 1 Purchase or the Date 3 Purchase, and that the Date 1 Purchase and the Date 3 Purchase were not related to, or contingent in any way upon, the Refinancing. Borrower represents that the Refinancing would have occurred regardless of whether the Date 1 Purchase or the Date 3 Purchase occurred.

Issuer represents that it is applying Prop. Treas. Reg. § 1.150-1(d)(2)(ii) and (v), 67 Fed Reg 17509 (April 10, 2002), to the New Bonds.

Law and Analysis

Treas. Reg. § 1.150-1(a)(1) provides that the definitions of § 1.150-1 apply for all purposes of I.R.C. §§ 103 and 141 through 150. Treas. Reg. § 1.150-1(d)(1) provides, in general, that a refunding issue is an issue of obligations the proceeds of which are used to pay principal, interest, or redemption price on another issue (a prior issue, as more particularly defined in paragraph (d)(5)), including the issuance costs, accrued interest, capitalized interest on the refunding issue, a reserve or replacement fund, or similar costs, if any, properly allocable to that refunding issue.

Treas. Reg. § 1.150-1(b) defines related party in part to mean, with reference to any person that is not a governmental unit or 501(c)(3) organization, a related person (as defined in § 144(a)(3)). Section 144(a)(3) provides in part that a person is a related party to another person if the relationship between such persons would result in a disallowance of losses under §§ 267 or 707(b). Section 707(b)(1)(B) states that no deduction shall be allowed in respect of losses from sales or exchanges of property

(other than an interest in the partnership), directly or indirectly, between two partnerships in which the same persons own, directly or indirectly, more than 50 percent of the capital interests or profits interests. Section 707(b)(3) provides that for this purpose, the ownership of a capital or profits interest in a partnership shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) other than paragraph (3) of such section. Section 267(c)(1) provides, in part, that stock owned, directly or indirectly, by or for a partnership shall be considered as being owned proportionately by or for its partners.

Issuers may apply proposed regulations amending Treas. Reg. § 1.150-1(d) published in the Federal Register on April 10, 2002 (67 Fed. Reg. 17509) (the "Proposed Regulations"), in whole, but not in part, to any issue that is sold on or after April 10, 2002, and before the applicability date of the final regulations.

Prop. Treas. Reg. § 1.150-1(d)(2)(ii)(A) provides in part that an issue is not a refunding issue to the extent that the obligor (as defined in paragraph (d)(2)(ii)(B)) of one issue is neither the obligor of the other issue nor a related party with respect to the obligor of the other issue. The determination of whether persons are related for this purpose is generally made immediately before the issuance of the refinancing issue.

Prop. Treas. Reg. § 1.150-1(d)(2)(ii)(B) provides in part that the obligor of an issue means the actual issuer of the issue, except that the obligor of the portion of an issue properly allocable to an investment in a purpose investment means the conduit borrower under that purpose investment.

Prop. Treas. Reg. § 1.150-1(d)(2)(ii)(C) provides in part that if, within six months before or after a person assumes (including taking subject to) obligations of an unrelated party in connection with an acquisition transaction (other than a transaction to which § 381(a) applies), the assumed issue is refinanced, the refinancing issue is not a refunding issue. An acquisition transaction is a transaction in which a person acquires assets (other than an equity interest in an entity) from an unrelated party.

Section 708(a) provides that, for purposes of subchapter K, an existing partnership shall be considered as continuing, if it is not terminated.

Section 708(b)(1)(B) provides that, for purposes of § 708(a), a partnership shall be considered as terminated only if within a 12-month period there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits.

Treas. Reg. § 1.708-1(a) provides that for purposes of subchapter K, chapter 1 of the Code, an existing partnership shall be considered as continuing if it is not terminated. Section 1.708-1(b)(2) provides, in part, that a partnership shall terminate when 50 percent or more of the total interest in partnership capital and profits is sold or exchanged within a period of 12 consecutive months. Moreover, if the sale or exchange

of an interest in a partnership (upper-tier partnership) that holds an interest in another partnership (lower-tier partnership) results in a termination of the upper-tier partnership, the upper-tier partnership is treated as exchanging its entire interest in the capital and profits of the lower-tier partnership. If the sale or exchange of an interest in an upper-tier partnership does not terminate the upper-tier partnership, the sale or exchange of an interest in the upper-tier partnership is not treated as a sale or exchange of a proportionate share of the upper-tier partnership's interest in the capital and profits of the lower-tier partnership.

Treas. Reg. § 1.708-1(b)(4) provides, in part, that if a partnership is terminated by a sale or exchange of an interest, the following is deemed to occur: The partnership contributes all of its assets and liabilities to a new partnership in exchange for an interest in a new partnership; and, immediately thereafter, the terminated partnership distributes interests in the new partnership to the purchasing partner and the other remaining partners in proportion to their respective interests in the terminated partnership in liquidation of the terminated partnership, either for the continuation of the business by the new partnership or for its dissolution and winding up.

Issuer is applying the Proposed Regulations to the New Bonds. At the time of the Refinancing on Date 2, the obligor of the Bonds was Borrower/Principal and the obligor of the New Bonds was Borrower/Principal. No change occurred at that time in the ownership of either Principal or Partnership. However, on Date 3, within 6 months of the Refinancing, a termination and transfer of assets and liabilities of Partnership occurred pursuant to § 708(b), when Holding Company acquired Bank A's and Bank B's remaining shares in Partnership. Further, Partnership is treated as exchanging its percent interest in Principal, resulting in a termination and transfer of assets and liabilities of Principal.

Under Prop. Treas. Reg. § 1.150-1(d)(2)(ii)(C), a refinancing issue is not treated as refunding issue if, within six months before or after a person assumes (including taking subject to) obligations of an unrelated party in connection with an asset acquisition from an unrelated party, the assumed obligation is refinanced. That section requires an analysis of whether the debt was assumed by, and the deemed transfer of the assets was to, an unrelated party.

As a result of the technical termination, the assets and liabilities of Partnership were deemed transferred to a new partnership ("New Partnership"), percent of which is owned by Holding Company. Immediately prior to the Date 3 purchase, Holding Company owned of Partnership. Therefore, because Holding Company's ownership interests in Partnership and in New Partnership are both greater than percent, Partnership and New Partnership are related parties for purposes of § 1.150-1(b). Similarly, the assets and liabilities of Principal were deemed transferred to a new partnership ("New Principal"). Thus, Partnership owned percent of Principal before the Date 3 purchase and New Partnership owned percent of New Principal after

the Date 3 purchase. Because of Holding Company's interests in Partnership and New Partnership, Principal and New Principal also are related parties.

Accordingly, the New Bonds are refunding bonds because the obligors of the Bonds and the New Bonds were the same on Date 2 and the transfers of assets and liabilities of Principal and Partnership on Date 3 were between related parties.

Conclusion

Under the facts and circumstances of this case, notwithstanding the technical termination of Partnership under Treas. Reg. § 1.708-1(b)(2) (all within six months of the date of the Refinancing), we conclude that the New Bonds are refunding bonds

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any transaction or item discussed or referenced in this letter.

This 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.

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

The ruling contained in this letter is based upon information and representations submitted by Issuer and Borrower and accompanied by penalty of perjury statements executed by the appropriate parties. While this office has not verified any of the materials submitted in support of the request for a ruling, it is subject to verification upon examination.

Sincerely,

Associate Chief Counsel
(Financial Institutions & Products)

/s/
By: _____
Timothy L. Jones
Senior Counsel, Branch 5