

Private Letter Ruling 8920003, IRC Section 42

January 17, 1989

This is in response to a letter dated June 8, 1988, and subsequent correspondence dated December 19, 1988, submitted on behalf of Taxpayer by your authorized representative. In that letter, a ruling is requested that Taxpayer's proposed personal care services and provision of meals as described below will not prevent the property from qualifying as low-income housing eligible for the low-income housing credit under section 42 of the Internal Revenue Code. The represented facts as submitted are set forth below.

Taxpayer was incorporated on *** under the State X Nonprofit Corporation Law. Taxpayer represents that it was formed to provide a community focal point for elderly persons to join in programs to help maintain their personal independence as well as to receive advice and assistance with problems facing the elderly. Taxpayer operates a main center and satellites that provide services to the elderly.

Corp Y is a for profit corporation that will be formed under the Business Corporation Law of State X. Corp Y will be formed to serve as a general partner of a limited partnership to be formed to acquire Property. The stock of Corp Y will be owned by Taxpayer. Partnership Z will be a limited partnership formed to acquire Property. Taxpayer anticipates that the limited partners will be taxable individuals or corporations.

The proposed development will include the purchase of Property from an unrelated party.

Partnership Z will acquire Property and rehabilitate and convert it into a "personal care residence." Taxpayer expects that the acquisition and rehabilitation of Property will cost approximately ***.

Once the rehabilitation is completed, *** residential units will be available for older persons (60 and over) to live in Property. Taxpayer anticipates that there will be a single room occupancies and *** rooms with double occupancy. However, regardless of the occupancy, whether single or double, each tenant will pay the same rent. All of the tenants will be able to walk and be mentally competent. Taxpayer represents that they will not need skilled nursing care, but they may need help with one or more of their personal needs, e.g., bathing, dressing, etc. The residents will be given the option to receive, for an additional fee, the right to take their meals to be prepared by Taxpayer and served in a central dining room as well as some personal care services. However, no medical or nursing services will be provided, as all residents will have to make their own arrangements when these services are needed.

All residents will pay a monthly rental charge. All rentals will be the same. Each tenant will pay the same rental of *** per month. In addition, the residents will have the option to pay a monthly fee for meals and personal care services. Taxpayer anticipates that most of the residents will exercise their option and elect to receive the meals and services. If

the election were in fact made by all of the residents, one-third of the residents would pay per month, in total, for rental and services, ***, one-third would pay ***, and one-third would pay ***. The differing charges reflect a means test for individuals electing to pay for the optional services. Depending upon the means and subsidies available, different individuals will pay differing amounts for services provided.

The services, other than for the maintenance and operation of Property which would be undertaken by Partnership Z, will be provided by Taxpayer. In providing the personal care services, Taxpayer will provide a resident supervisor, additional day and night aides and a daytime supervisor. Taxpayer estimates that there would be approximately *** meals per year served for each of the residents.

The funds for accomplishing the acquisition and rehabilitation of Property will come from the limited partners, foundations exempt under section 501(c)(3) of the Code, and possibly from governmental grants. At this time Taxpayer does not know what the mix of funds will be.

Except for the issue raised in this ruling, Taxpayer represents that all other requirements of section 42 of the Code will be satisfied so that the low-income housing credit will be available. Taxpayer requests a ruling that the personal care services and meals will not prevent Property from qualifying for the low-income housing credit.

Section 38(a) of the Code provides for a general business credit against tax that includes the amount of the current year business credit. Section 38(b)(5) provides that the amount of the current year business credit includes the low-income housing credit determined under section 42(a).

Section 42(a) of the Code, added by section 252 of the Tax Reform Act of 1986 (the "1986 Act"), 1986-3 (Vol. 1) C.B. 106, provides that, for purposes of section 38, the amount of the low-income housing credit determined under section 42 for any tax 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(g)(1) of the Code defines the term "qualified low-income housing project" to mean any project for residential rental property if the project meets the requirements of section 42(g)(1)(A) or (B), whichever the taxpayer elects. The election is irrevocable. Section 42(g)(2)(A) provides that a unit is rent-restricted if the gross rent (defined in section 42(g)(2)(B)) that is paid for the unit does not exceed 30 percent of the income limits that section 42(g)(1) imposes upon the occupants.

Notice 89-6, 1989-2 I.R.B. 16, states that regulations under section 42 of the Code will provide that the furnishing to tenants of services other than housing (whether or not such services are significant) will not prevent property from qualifying as residential rental property. However, any charges for services that are not optional to low-income tenants must be included in gross rent for purposes of section 42(g)(2)(A) of the Code. A service is optional if payment for the service is not required as a condition of occupancy. Thus, in

certain circumstances, a retirement-type facility may qualify under section 42 as a residential rental facility, notwithstanding that significant services other than housing are furnished to tenants. Furthermore, if continual nursing, medical, or psychiatric care is provided, it will be presumed that such services are mandatory. This is generally the case with hospitals, nursing homes, sanitariums, and lifecare facilities.

Notice 89-6 provides an example where meals and other services are provided to low-income tenants in a retirement home. Under the example, the cost of these services, when combined with rent and utility allowances, exceeds the 30 percent gross rent limitation. If any low-income tenants are required to pay for these services as a condition of occupancy, then the units occupied by these tenants are not rent-restricted units and are not included in qualified basis. However, if payment for these services is OPTIONAL, then these units are rent-restricted units and are includible in qualified basis assuming that the gross rent limitation is otherwise satisfied. Where multiple services are provided, a building owner must decide which services are mandatory and included in the 30 percent gross rent limitation. All other services must be provided on an optional basis.

Taxpayer represents that the tenants of Property will have the option to receive for a fee certain personal care services and meals and such payment is not required as a condition of occupancy. Taxpayer also represents that it will provide no medical or nursing services to the tenants. Thus, the cost of these services and meals will not have to be included in determining whether the 30 percent gross rent limitation of section 42(g)(2)(A) of the Code is exceeded.

Therefore, based upon the above facts and representations, we rule as follows:

The rendition of personal care services and provision of meals by Taxpayer to the tenants of Property will not prevent Property from qualifying for the low-income housing credit under section 42 of the Code.

No opinion is expressed or implied regarding the application of any other provisions of the Code or regulations or to whether Property will otherwise qualify for the low-income housing credit under section 42 of the Code. Nor is any opinion expressed under section 42(g)(2) and 42(i)(3) regarding a unit occupied by more than one unrelated person.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Because this ruling is issued under the authority of Rev. Proc. 88-18, 1988- 20 I.R.B. 32, and section 5.07(3) of Rev. Proc. 89-1, 1989-1 I.R.B. 8, this ruling may be modified or revoked by the Service. However, when the criteria in section 16.05 of Rev. proc. 89-1 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

A copy of this letter should be attached to the appropriate federal income tax return for the taxable year in which the transaction covered by this ruling is consummated.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent. In accordance with the power of attorney on file, we are sending a copy of this letter to your authorized representative. Assistant Chief Counsel (Passthroughs and Special Industries) Susan Reaman Assistant to the Chief Branch 5 Enclosure: 6110 copy