

Private Letter Ruling 9526009, IRC Section 42

Date: March 27, 1995

Dear ***

This letter responds to your letter of July 13, 1994, submitted on behalf of Taxpayer, requesting a letter ruling under section 42(g)(2)(B)(iii) of the Internal Revenue Code.

Taxpayer has made the following representations.

FACTS:

Taxpayer is a State A limited partnership that uses an annual accounting period and the accrual method of accounting. The City B District Office will have examination jurisdiction over the returns of Taxpayer. Taxpayer is proposing to develop a a-unit housing development (the Development) for the elderly in City A. At least 20 percent of the units will be set aside for elderly individuals with income below 50 percent of the area median gross income. Each unit in the Development will have complete living, sleeping, eating, cooking, and sanitation facilities. Each unit will have a locked door and will be separate and distinct from the other units. Each lease will have a minimum of six months, and all units will be generally available to members of the general public who are 6 years of age or older and who need assistance with one or more activities of daily living.

Under its Program x, the Agency will finance the Development. The Agency is not the housing credit agency for State A. The Development plans to use tax-exempt bond financing and the 30 percent present value credit of section 42(b)(2)(B).

Under Program X, developments must offer a supportive service program that provides assistance with the activities of daily living and other routine non-medical assistance. Under Program X, sponsors of developments are encouraged to structure rent and services in a standard package including basic assistance available for a monthly charge. The residents of the Development will have the option of declining the supportive services provided by the operator and the right to obtain such services from an alternative provider.

Program X is designed to operate in conjunction with Program Y. The purpose of program Y is to provide, in combination with other available subsidies, room, board, and personal care services in a protected housing environment to elderly and/or disabled individuals who are at imminent risk of institutional placement.

A significant number of the residents in the Development may be receiving assistance under the Supplemental Security Income (SSI) program. The SSI program, 42 U.S.C. sections 1381-1383C, provides benefits to aged, blind, and disabled individuals that have income and resources below certain statutory amounts. 42 U.S.C. section 1382. The SSI

program establishes a national minimum benefit level for all eligible persons and allows the states to provide additional benefits through state supplements. Id. section 1382e. A state may elect, among other supplemental categories, to supplement up to six variations in "recognition of the different needs [that] result from various living arrangements." 20 C.F.R. section 416.2030(a)(2). If a state chooses to provide the supplemental payments, the state, not the federal government, assumes sole financial responsibility for the supplements. Accordingly, under no circumstances does the federal government bear the cost of the state supplements.

Under this authority and Statute X, State A, having elected to provide supplemental benefits, entered into the Agreement, under which the Social Security Administration administers the applicable state supplemental payments. Currently, the Agreement provides, among other things, for supplementation in five categories.

In conjunction with Program X and Program Y, on t1, State A requested a change to the Agreement, to be effective as of t2 (the Modification). The purpose of the Modification is to provide adequate resources for low-income individuals that would allow them to reside in developments that provide supportive services and, thereby, to divert them from placement in institutional settings. The Modification adds a new optional supplement living arrangement. State A has determined that rent, board, and ancillary services (such as transportation and housekeeping) not otherwise covered by Program Y in a residence similar to the Development in State A would cost no less than \$c per month and that the elderly need approximately \$d for additional expenses. Accordingly, individuals covered by the Modification will receive benefits of up to \$e (the Subsidy). Thus, the Subsidy will go directly to qualifying individuals.

Under Program X guidelines and the Subsidy, Taxpayer intends initially to charge a non-separable fee of up to \$c per month for rent, board, transportation, housekeeping, social services, and other supportive services.

RULING REQUESTED:

Taxpayer requests a letter ruling that supplemental payments to individuals residing in the Development made by State A under the Agreement revised by the Modification will be excluded from the calculation of gross rent under section 42.

LAW AND ANALYSIS:

Section 42(a) provides that the amount of the low-income housing credit determined under section 42 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." Under section 42(c)(2), the term "qualified low-income building" means any building (A) that is part of a "qualified low-income housing project" at all times during the period (i) beginning on the 1st day in the compliance period on which such building is part of such a project, and (ii) ending on the last day of the compliance period with respect to such

building, and (B) to which the amendments made by section 201(a) of the Tax Reform Act of 1986 apply.

Section 42(g)(1) defines a "qualified low-income housing project" as any project for residential rental use that meets one of the following requirements: (A) 20 percent or more of the residential units in the project are both rent-restricted and occupied by individuals whose income is 50 percent or less of AMGI, as adjusted for family size, or (B) 40 percent or more of the residential units in the project are both rent-restricted and occupied by individuals whose income is 60 percent or less of AMGI, as adjusted for family size.

Section 42(g)(2)(A) provides that 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 42(g)(2)(B)(iii) provides that gross rent does not include any fee for a supportive service that is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by an organization described in section 501(c)(3) and exempt from tax under section 501(a)) if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services. For clause (iii), the term "supportive service" means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. In the case of a single-room occupancy unit or a building described in section 42(i)(3)(B)(iii), such term includes any service provided to assist tenants in locating and retaining permanent housing.

RULING:

After applying the relevant law to the facts submitted and the representations set forth above, we rule as follows: Under section 42(g)(2)(B)(iii), the supplemental payments by State A, under the Agreement revised by the Modification, to individuals residing in the Development will be excluded from the calculation of gross rent for section 42(g)(2)(A) purposes.

No opinion is expressed or implied regarding the application of any other provisions of the Code or regulations. Specifically, we express no opinion on whether the Development would qualify as residential rental property under section 42(g)(1) or on whether the Development would merit a housing credit dollar amount under section 42(m)(2).

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

Under the power of attorney on file, you are receiving this letter as the authorized representative for Taxpayer.

Sincerely yours,

JAMES F. RANSON

Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)