

Private Letter Ruling 9538015, IRC Section 42

Date: June 16, 1995

Dear ***

This letter responds to your letter dated February 13, 1995, and subsequent correspondence on behalf of Taxpayer as its authorized representative, requesting a ruling under section 42 of the Internal Revenue Code. You request a ruling that the adjusted basis of a unit occupied by a security officer in a building that is part of Project, that is reasonably required by Project, is included in the building's eligible basis under section 42(d)(1), but that the unit is not included in the building's applicable fraction under section 42(c)(1)(B). You also request that the inclusion of the adjusted basis of the security officer's unit in the building's eligible basis will not be affected by a later conversion of that unit to a residential rental unit. The relevant facts as represented in your letter are set forth below.

FACTS:

During t1, Taxpayer, a State limited partnership with a calendar tax year, placed in service a newly constructed apartment building. The building is part of Project, a a unit multi-building low-income housing project located at Project Address. Project qualifies for tax credits under section 42(a) of the Internal Revenue Code of 1986. Taxpayer elected to meet the 40-60 test of section 42(g)(1)(B), which requires that at least 40 percent of the units in Project be rent-restricted and occupied by tenants whose income is 60 percent or less of area median income. In t2, one of the b units in the building was rented to, and occupied by Resident, a local City law enforcement officer, who is the security officer (Courtesy Officer) for Project. By the close of t2, the remaining c units in the building were rent restricted and occupied by tenants whose income was 60 percent or less of area median gross income. All of the units in the building meet the same quality standards.

Taxpayer filed a partnership income tax return for t1, which included credits claimed pursuant to ownership of Project. The District Office which has examination jurisdiction is ***, ***.

On t3, Taxpayer entered into a contractual relationship with Courtesy Officer, to perform safety and security services which contribute to the management and control of Project. In consideration for such services, Taxpayer agreed to furnish Courtesy Officer with an on-site apartment unit in Project. Courtesy Officer is required to be on-site during the evening and nighttime hours to respond to resident requests for assistance, including complaints, unauthorized visitors, improper parking, and unauthorized use of community facilities. Courtesy Officer must also provide a variety of other activities, including resident criminal background investigations, neighborhood watch programs and educational activities for primary school age residents. Courtesy Officer provides a daily log of activities to Project manager.

Because of the size of Project, Courtesy Officer must deal with numerous emergencies and disturbances which can occur at any time during the evening and nighttime hours.

Taxpayer represents that the presence of Courtesy Officer on- site during the evening and nighttime hours tend to reduce the level of disturbances at Project, and because of Project's size, is reasonably required by Project.

LAW AND ANALYSIS:

Section 42(a) of the Internal Revenue Code provides a tax credit for investment in low-income housing buildings placed in service after December 31, 1986. For any taxable year in a ten-year credit period, the amount of credit is equal to the applicable percentage of the qualified basis of each qualified low-income building.

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

Section 42(c)(1)(B) defines the applicable fraction as the smaller of the unit fraction or the floor space fraction. Section 42(c)(1)(C) defines the unit fraction as the fraction the numerator of which is the number of low-income units in the building and the denominator of which is the number of residential rental units, whether or not occupied, in the building. Section 42(c)(1)(D) defines the floor space fraction as the fraction the numerator of which is the total floor space of the low-income units in the building and the denominator of which is the total floor space of the residential rental units, whether or not occupied, in the building. In general, under section 42(i)(3)(A), a low-income unit is any unit that is rent-restricted, is defined in section 42(g)(1), and occupied by individuals meeting the income limitation, under section 42(g)(1), applicable to the building.

Section 42(d)(1) provides that the eligible basis of a new building is its adjusted basis as of the close of the first tax year of the credit period. Section 42(d)(4)(A) provides that, except as provided in section 42(d)(4)(B), the adjusted basis of any building is determined without regard to the adjusted basis of any property that is not residential rental property. Section 42(d)(4)(B) provides that the adjusted basis of any building includes 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 rental units in the building.

The legislative history to section 42 states that residential rental property, for low-income housing credit purposes, has the same meaning as residential rental property within section 103. The legislative history also states that residential rental property includes residential rental units, facilities for use by the tenants, and other facilities reasonably required by the project. H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-89 (1986), 1986-3 (Vol. 4) C.B. 89. Under section 1.103-8(b)(4) of the Income Tax Regulations, facilities that are functionally related and subordinate to residential rental units are

considered residential rental property. Section 1.103-8(b)(4)(iii) provides that facilities functionally related and subordinate to residential rental units include facilities for use by the tenants, such as swimming pools and similar recreational facilities, parking areas, and other facilities reasonably required for the project. The examples given by section 1.103-8(b)(4)(iii) of facilities reasonably required by a project specifically include units for resident managers or maintenance personnel.

Rev. Rul. 92-61, 1992-2 C.B. 7, holds that the adjusted basis of a unit occupied by a full-time resident manager is included in the eligible basis of a qualified low-income building under section 42(d)(1), but the unit is excluded from the applicable fraction under section 42(c)(1)(B) for purposes of determining the building's qualified basis.

Based upon the above facts and representations, we rule as follows: The adjusted basis of the unit occupied by Courtesy Officer is included in the eligible basis of the building under section 42(d)(1), but the unit is excluded from the applicable fraction of the building under section 42(c)(1)(B). Further, the inclusion of the adjusted basis of the unit occupied by Courtesy Officer in eligible basis will not be affected by a later conversion of that unit into a residential rental unit.

Under the power of attorney on file, we are sending a copy of this ruling to the first and second representatives listed on the power of attorney.

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 Project otherwise qualifies for the low-income housing credit under section 42.

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.

Sincerely yours,

BARBARA B. WALKER

Assistant to the Chief,

Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)