

Private Letter Ruling 9822026, IRC Section 42

The Service has ruled that a community building that is part of a low-income housing development will be treated as an exempt facility.

Date: February 23, 1998

Refer Reply To: CC:DOM:P&SI:5 - PLR-109812-97

LEGEND:

Partnership = ***

GP = ***

GP2 = ***

LP = ***

LP2 = ***

Project = ***

State A = ***

State B = ***

b = ***

c = ***

d = ***

f = ***

g = ***

h = ***

j = ***

k = ***

m = ***

n = ***

Dear ***

This letter responds to your letter dated May 15, 1997, requesting a private letter ruling on behalf of Partnership under section 42(d) of the Internal Revenue Code and section 1.103-8 of the Income Tax Regulations.

The relevant facts as represented in your submission are set forth below.

Partnership, a State A limited partnership, was formed on b, to develop, own, and manage the Project. Currently, the general partner of Partnership is GP. However, a new general partner (GP2) will be admitted in k as the sole general partner of Partnership, and GP's general partnership interest then will be liquidated by Partnership. While the current limited partner of Partnership is LP, a new limited partner, LP2, a State B limited partnership, will be admitted in k as the sole limited partner, and LP's limited partnership interest then will be liquidated by Partnership.

The Project will be a c unit project consisting of d residential buildings that will be occupied solely by low-income tenants having incomes 60 percent or less of the median income for the area. For the Project, Partnership will elect the 40/60 minimum set-aside requirement.

The Project also will include a community building that will be used for tenant meetings, life skill classes, and cooperative child care. The community building will contain a large meeting room, a kitchen, a laundry room, an administrative office, a storage room, and m classrooms equipped for child care activities. The community building is intended, among other things, to provide various on-site social services to

Project residents to expedite their return to independent living. The available social services will include counseling, parenting, basic education and literacy, job training, day care, pre-school classes through Head Start, legal aid, and financial aid. Except for the m day care classrooms, use of the community building will be limited to Project residents, employees of the operator of the Project, and social services case workers.

The Head Start program for the Project requires that a minimum of f participants be enrolled for Partnership to receive full reimbursement for all Head Start program expenses from the federal government. If there are less than f resident participants using the day care facility, the day care classrooms and associated Head Start program will be available for use by non-residents of the Project. In all events, however, the day care facility will be available on an absolute priority basis to the Project residents. Once the Head Start program's quota of f participants is met, a waiting list will be established for an opening in the Head Start or day care program. All Project residents on the waiting list will have an absolute priority over non-residents on the waiting list.

Both the resident and non-resident participants of the Head Start and day care programs will not be charged a separate fee for using the day care facility. Also, the number of resident participants in the programs is expected to be more than n percent of the total participants, including both resident and non-resident participants. The day care facility will be made available on a comparable basis to all the tenants of the Project.

Partnership represents that the size of the community building will not exceed the size anticipated to be necessary to provide on-site social services including child care services, to the residents of the Project. The community building will contain approximately g square feet, including m day care classrooms totalling approximately h square feet. The total Project, including the residential buildings and the community building, will contain approximately j square feet. Partnership represents that the services, including the Head Start program services, are commensurate with the character of the Project.

Partnership requests rulings that the community building will qualify as a functionally related and subordinate facility within the meaning of section 1.103-8(a)(3) and section 1.103-8(b)(4)(iii) and the allocable cost of the community building will be includable in the eligible basis of the Project under section 42(d).

Section 42(a) provides a tax credit for investment in low-income 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 housing building for any taxable year as an amount equal to the applicable fraction (determined as of the close of the taxable year) of the eligible basis of the building (determined under section 42(d)). Under section 42(c)(1)(B), the applicable fraction means the smaller of the unit fraction or the floor space fraction.

Section 42(d)(1)(A) provides that the eligible basis of a new building is its adjusted basis as of the close of the first taxable year of the credit period. Section 42(d)(4)

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. Under section 42(d)(4)(B), the adjusted basis of any building is determined by taking 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 rental units in the building.

The legislative history of section 42 states that residential rental property for purposes of the low-income housing credit has the same meaning as residential rental property within the meaning of section 103 and, thus, residential rental property includes residential rental units, facilities for use by the tenants, and other facilities reasonably required by the project. Further, the legislative history states 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. H.R. Conf. Rep. 841, 99th Cong. 2d Sess. II-89, II-90 (1986), 1986-3 (Vol. 4) C.B. 89, 90.

Section 1.103-8(a)(3) provides the general rule that an exempt facility includes land, building, or other property functionally related and subordinate to the facility. Property is not functionally related and subordinate to a facility if it is not of a character and size commensurate with the character and size of the facility.

Section 1.103-8(b)(4)(iii) provides that under section 1.103-8(a)(3), facilities that are functionally related and subordinate to residential rental projects include facilities for use by the tenants, for example, swimming pools, other recreational facilities, parking areas, and other facilities that are reasonably required for the project, for example, heating and cooling equipment, trash disposal equipment, or units for resident managers or maintenance personnel.

Partnership represents that the size of the community building does not exceed that necessary to service the requirements of the residents of the Project, and that the services provided in the building are commensurate with the character of the Project. Further, Partnership represents that except for the day care facility, the community building will be used exclusively by the Project residents and persons providing services to them. Although the day care facility might not be used exclusively by the Project residents, Partnership represents that this facility, relative to its use by Project residents, is commensurately sized and will be used principally by the Project residents. Moreover, Partnership represents that there will be no separate fee for using the day care facility by the residents and the non-residents of the Project and that this facility will be made available on a comparable basis to all tenants in the Project.

Accordingly, based solely upon the representations and relevant law as set forth above, we conclude as follows:

1. The community building qualifies as a functionally related and subordinate facility within the meaning of section 1.103-8(a)(3) and section 1.103-8(b)(4)(iii); and
2. The allocable cost of the community building is included in the eligible basis of the Project under section 42(d).

No opinion is expressed or implied regarding the application of any other provision of the Code or regulations. Specifically, we express no opinion on whether the Project

qualifies for the low-income housing credit under section 42, or on the tax consequences under any provision of the Code or regulations, including section 42, of the acquisition and liquidation of the partnership interests in Partnership.

This letter 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.

Pursuant to the power of attorney on file with this office, we are forwarding a copy of this letter to Partnership and the second authorized representative listed.

Sincerely yours,
Kathleen Reed
Assistant to the Branch Chief,
Branch 5
Office of the Assistant
Chief Counsel
(Passthroughs and Special Industries)

Enclosures: