

Part I
Section 42.--Low-Income Housing Credit
Rev. Rul. 2003-77

ISSUE

Does the facility described below qualify as a community service facility under § 42(d)(4)(C)(iii) of the Internal Revenue Code?

FACTS

A qualified low-income building (the Building) received a housing credit allocation on October 1, 2002, and was placed in service in 2003. The Building is located in a qualified census tract (as defined in § 42(d)(5)(C)). A portion of the Building (the Facility) is used throughout the year to provide services to residents of the Building as well as nonresidents. The Facility consists of a meeting room, an administrative office, a storage room, and several multi-purpose rooms. The services provided at the Facility include day care, career counseling, literacy training, education (including tutorial services), recreation, and outpatient clinical health care. The services are provided free of charge or for a fee that is affordable to individuals whose income is 60 percent or less of area median income (within the meaning of in § 42(g)(1)(B)). The adjusted basis of the property comprising the Facility (of a character subject to the allowance for depreciation and not otherwise taken into account in the adjusted basis of the Building) does not exceed 10 percent of the eligible basis of the Building.

As required by § 42(m)(1)(A)(iii), prior to the allocation of housing credit to the Building, a comprehensive market study was conducted to assess the housing needs of the low-income individuals in the area to be served by the Building. The study found, among other things, that providing day care, career counseling, literacy training, education (including tutorial services), recreation, and outpatient clinical health care services would be appropriate and helpful to individuals in the area of the Building whose income is 60 percent or less of area median income.

LAW AND ANALYSIS

Section 42(a) provides that the amount of the low-income housing credit determined for any taxable year in the credit period is an amount 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 taxable year as an amount equal to the applicable fraction (as defined in § 42(c)(1)(B)), determined as of the close of the taxable year, of the eligible basis of the building, determined under § 42(d)(5).

Section 42(d)(1) 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)(A) provides that, except as provided in § 42(d)(4)(B) and (C), 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.

Section 42(d)(4)(C)(i) provides that the adjusted basis of any building located in a qualified census tract is determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation and not otherwise taken into account) used throughout the taxable year in providing any community service facility. Section 42(d)(5)(C)(ii)(I) defines the term "qualified census tract" as any census tract which is designated by the Secretary of Housing and Urban Development (HUD) and, for the most recent year for which census data are available on household income in the tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for the year or which has a poverty rate of at least 25 percent. See <http://www.huduser.org/datasets/qct.html> for census tracts designated by the Secretary of HUD.

Section 42(d)(4)(C)(ii) provides that the increase in the adjusted basis of any building which is taken into account by reason of § 42(d)(4)(C)(i) may not exceed 10 percent of the eligible basis of the qualified low-income housing project of which it is a part. For this purpose, § 42(d)(4)(C)(ii) provides that all community service facilities which are part of the same qualified low-income housing project are treated as one facility.

Section 42(d)(4)(C)(iii) provides that the term "community service facility" means any facility designed to serve primarily individuals whose income is 60 percent or less of area median income (within the meaning of § 42(g)(1)(B)).

Section 42(m)(1)(A)(iii) provides that the housing credit dollar amount with respect to any building will be zero unless a comprehensive market study of the housing needs of low-income individuals in the area to be served by the project is conducted before the credit allocation is made and at the developer's expense by a disinterested party who is approved by the housing credit agency.

Under § 42(d)(4)(C)(iii), a community service facility must be designed to serve primarily individuals whose income is 60 percent or less of area median income. This requirement will be satisfied if the following conditions are met. First, the facility must be used to provide services that will improve the quality of life for community residents. Second, the taxpayer must demonstrate that the services provided at the facility will be appropriate and helpful to individuals in the area of the project whose income is 60 percent or less of area median income. This may, for example, be demonstrated in the market study required to be conducted under § 42(m)(1)(A)(iii), or another similar study. Third, the facility must be located on the same tract of land as one of the buildings that comprises the qualified low-income housing project. Finally, if fees are charged for services provided, they must be affordable to individuals whose income is 60 percent or less of area median income.

Under the facts presented, the Facility is designed to serve primarily individuals whose income is 60 percent or less of area median income for the following reasons: (1) the services provided at the Facility—day care, career counseling, literacy training, education (including tutorial services), recreation, and outpatient clinical health care—are services that will help improve the quality of life for community residents; (2) the market study required to be conducted under § 42(m)(1)(A)(iii) found that the services provided at the Facility would be appropriate and helpful to individuals in the area of the Building whose income is 60 percent or less of area median income; (3) the Facility is located within the Building; and (4) the services provided at the Facility are affordable to individuals whose income is 60 percent or less of area median income.

HOLDING

The Facility qualifies as a community service facility under § 42(d)(4)(C)(iii). Because the other requirements set forth in § 42(d)(4)(C) are met, the adjusted basis of the Building will be determined by taking into account the adjusted basis of the Facility.

DRAFTING INFORMATION

The principal author of this revenue ruling is Gregory N. Doran of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Mr. Doran at (202) 622-3040 (not a toll-free call).