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IRS Rules Solar System at Low-Income Housing Project Not Financed with Private Activity Bond Proceeds

On May 16, 2008, the Internal Revenue Service released PLR 200820011 which holds that a taxpayer was not required to reduce its basis in a solar system subsequently installed at a low-income housing project. The housing project, but not the solar system, was financed using the proceeds of private activity bonds. A copy of the PLR is available by [clicking here](#).

In PLR 200820011, the taxpayer was a partnership which was formed to construct, operate, manage, etc. a low-income housing project that was expected to be eligible for the low-income housing credit under section 42 of the Code. The cost of the housing project was funded by various sources, including the proceeds of multifamily housing revenue bonds (i.e., proceeds of a private activity bond within the meaning of section 141 of the Code). At the time the taxpayer acquired the land and obtained the financing for the project, the project's plans and budget included only conventional energy systems. However, the taxpayer contemplated adding a solar system to the project at a later date. Accordingly, the bond loan documents were amended to allow the taxpayer to add the solar system provided

that the system was redundant, not financed with bond loan proceeds, and not used as collateral for the bond loan. The taxpayer later added the "redundant" solar system to the project which the taxpayer anticipated would be eligible for section 48 tax credits.

Section 48(a)(4) provides for a reduction in basis for purposes of the section 48 investment tax credits if the property is financed (in whole or in part) by (i) subsidized energy financing, or (ii) the proceeds of a private activity bond (within the meaning of section 141) the interest on which is exempt from tax under section 103.

The Service concluded that the taxpayer was not required to reduce its basis in the solar system because: (i) the bond loan documents contain language prohibiting the bond loan proceeds from being used as financing for the system, (ii) bond loan proceeds were not used to finance the system, (iii) the system is redundant, and (iv) the system is not and cannot be used as collateral for the bond loan.

Private letter rulings may not be used or cited as precedent and are only applicable to the taxpayer who requested the ruling.