

Private Letter Ruling 200024040 - IRC Section 42

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Internal Revenue Service
Department of the Treasury
P.O. Box 7604
Ben Franklin Station
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LEGEND:

Partnership =

Seller =

Project =

Authority =

State A =

B =

City C =

D =

Corp M =

Corp N =

b =

c =

d =

e =

f =

g =

h =

t1 =

t2 =

t3 =

t4 =

t5 =

t6 =

t7 =

t8 =

t9 =

t10 =

t10 =

Dear

This ruling letter responds to your letter dated February 1, 2000, and subsequent correspondence, submitted on behalf of Partnership requesting a private letter ruling that will waive for the Project the 10-year holding period requirement for existing buildings of § 42(d)(2)(B)(ii) of the Internal Revenue Code, under the authority of the exception for the acquisition of certain federally-assisted buildings provided in § 42(d)(6)(A)(i).

Partnership was organized on t1 as a State A limited partnership to acquire, rehabilitate, and operate an apartment complex (the Project). Partnership consists of Corp M, as the general partner with a b percent partnership interest, and individual B, as the limited partner with a c percent partnership interest. At some future date Partnership plans to syndicate the partnership interests.

The Project consists of d apartment units housed in e residential buildings, with f units each, and an additional common usage building containing an office, laundry, and a maintenance/storage area. The Project, located in City C, was constructed and placed in service by a prior owner in t2. Federal assistance for the Project was initially provided by a loan from the Farmers Home Administration (FmHA) under § 515 of the Housing Act of 1949.

Partnership represents that in t3, Corp N purchased the general partnership from individual D. In t4, Corp M, the general partner of Partnership, acquired Corp N and the related general partnership in the Project. During both of these acquisitions the limited partners remained the same. During t10, Corp M bought out the limited partners and effected a termination of the partnership under the provisions of §708(b)(1)(B). On ts, Corp M transferred the general partnership in the Project from Corp N to itself.

You represent that, on t6, the Project was acquired by Partnership as the result of a servicing action by the Rural Housing Service (RHS) of the U.S. Department of Agriculture, (formerly FmHA), to avert federal funds being at risk. The Rural Housing Service has submitted a letter, dated t7, to the Internal Revenue Service designating the project as a 'troubled project' based on a history of financial distress and mortgage default.

You state that on t6, Partnership's general partner, Corp M, completed all the transactions involved in the acquisition of the Project from the prior owner. Consideration for the Project was the assumption of a renegotiated loan with RHS in the amount of \$g.

Partnership further represents that it intends to spend approximately \$h to rehabilitate the Project.

Under the state low-income housing limitations provided by § 42(h), Partnership applied for and received a t8 reservation for an allocation of the low-income housing tax credit dollar amount from the State A Housing Finance Authority (Authority).

Since the interval between when the Project was last placed in service (t10) and the date of acquisition (t6) is less than 10 years, Partnership has failed to meet the 10-year holding period requirement of § 42(d)(2)(B)(ii) for existing buildings. As federal funds are at risk, Partnership has submitted this request for a waiver of the holding period requirement under the authority of the exception granted by § 42(d)(6)(A)(i).

Partnership has made the following representations and certifications concerning the Project:

(1) The acquisition of the buildings in the Project is by purchase (as defined under §179(d)(2) and as further restricted by §42(d)(2)(D)(iii)(I));

(2) Partnership acquired the buildings in the Project to provide affordable housing to qualified low-income households;

(3) On t8, Authority signed a reservation letter for a t8 allocation for the low-income housing credit dollar amount for Partnership to comply with the limitation of low-income housing credits to State A, as required by § 42(h);

(4) The buildings in the Project were not previously placed in service by Partnership or by a person who was a related person (as defined in § 42(d)(2)(D)(iii)(11)) to Partnership at the time the buildings were last placed in service;

(5) As of t6, the buildings in the Project were "federally-assisted buildings" as defined in section 42(d)(6)(B)(iii) and section 1.42-2(c)(1) of the Income Tax Regulations;

(6) As of t6, federal mortgage funds for the Project were at risk within the meaning of § 1.42-2(c)(2);

(7) There have been no nonqualified substantial improvements to the buildings in the Project since it was last placed in service on t10,

(8) To the best of knowledge of Partnership and its representatives, no prior owner of the Project was allowed a low-income housing credit under § 42 for the Project;

(9) All terms and conditions of § 42 and related sections, including substantial rehabilitation in excess of the minimum provided by § 42(e)(3), will be met except for § 42(d)(2)(B)(ii). Partnership asks that this requirement be waived under the authority granted the Secretary of the Treasury by § 42(d)(6)(A)(i); and (10) This application for the waiver is timely filed as it is within 12 months after the acquisition of the Project.

For an existing building to qualify for the 30-percent present value housing tax credit § 42(d)(2)(B)(ii) requires there be a period of at least 10 years between the date of the building's acquisition by the taxpayer and the later of:

(1) The date the building was last placed in service, or

(2) The date of most recent nonqualified substantial improvement of the building. Section 42(d)(6)(A)(i) provides an exception to the 10-year holding period requirement of § 42(d)(2)(B)(ii). Upon application by the taxpayer, the Secretary may waive this requirement for any federally-assisted building if the Secretary (after consultation with the appropriate federal official) determines that such waiver is necessary to avert an assignment of the mortgage secured by property in the project (of which such building is a part) to the Department of Housing and Urban Development or the Farmers Home Administration.

Section 42(d)(6)(B) defines the term "federally-assisted building" as including any building that is substantially assisted, financed, or operated under (i) § 8 of the United States Housing Act of 1937, (ii) § 221(d)(3) or § 236 of the National Housing Act, or (iii) § 515 of the Housing Act of 1949, as such Acts are in effect on the date of enactment of the Tax Reform Act of 1986 (October 22, 1986). Section 1.42-2 contains requirements that must be satisfied before the Secretary will grant the

waiver referred to in § 42(d)(6)(A)(i). You have represented that Partnership is in compliance with these requirements. Based solely upon the above facts and Partnership's representations, we have determined that the buildings in the Project are federally-assisted buildings within the meaning of § 42(d)(6)(B)(iii), and that federal funds are at risk under § 42(d)(6)(A)(i). Therefore, we rule as follows:

The 10-year holding period requirement of § 42(d)(2)(B)(ii) is waived for Partnership's acquisition of the Project.

No opinion is expressed or implied regarding the application of any other provision in the Code or regulations. Specifically, no opinion is expressed or implied regarding whether Partnership's costs of acquisition and rehabilitation of the buildings in the Project will qualify otherwise for the low-income housing credit under § 42.

This ruling is directed only to Partnership which requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this letter should be filed with the federal income tax return for Partnership and its partners for the first taxable year in which the low-income housing credit for the Project is claimed.

Sincerely yours,
Harold E. Burghart
Assistant to the Branch Chief, Branch 5
Office of the Assistant Chief Counsel