

PRIVATE LETTER RULING 200044013: IRC Section 42

Release Date: 11/3/2000

Dear :

This letter responds to your letter dated March 30, 2000, and a subsequent submission by your authorized representative requesting a ruling that Project may qualify for low income housing taxcredits under § 42 of the Internal Revenue Code.

ISSUE:

The issue in this request is whether any building in the Project receiving assistance under certain moderate rehabilitation renewal contracts may be a qualified low-income building as defined under § 42(c)(2) notwithstanding payments it receives under the

moderate rehabilitation renewal contracts.

CONCLUSION:

Based solely on the Partnership's representations of fact and relevant law, we rule that the assistance payments provided to any building in the Project through the renewal of Project Owner's expired HAP contracts under § 524 of MAHRA are included within the scope of the §42(c)(2) prohibition against the combined use of low-income housing credits and assistance under the § 8(e)(2) moderate rehabilitation program. Consequently, any building in the Project receiving such assistance may not be a qualified low-income building under § 42(c)(2) and Partnership's proposed rehabilitation expenditures for these buildings may not qualify for the low-income housing tax credit under § 42(e).

FACTS:

The relevant facts as represented in Partnership's submissions are set forth below.

Partnership was formed under the Act on c for the purpose of acquiring, rehabilitating, constructing, developing, owning and

operating Project, an a-unit apartment complex located at Address. Project includes b units that are eligible for subsidies under what is commonly known as the Section 8 program, as more fully described below. The internal Revenue Service District Office

that will have examination jurisdiction over Partnership and General Partner is located in City.

Partnership intends to acquire Project through an assignment of a purchase contract entered into by General Partner with Project Owner on d. Following its acquisition,

Partnership intends to rehabilitate Project, using funds to be provided from the proceeds of

the issuance of tax exempt bonds. These bonds will be issued by County Commission. In addition, Partnership has applied for a

loan from the County Department. Additional funds will come into Partnership from the equity that will be provided by a limited

partner, pursuant to a syndication of interests in Partnership.

Project was originally built in the early e. The original construction was financed with a loan under the Section 223(f) program from

the United States Department of Housing and Urban Development (HUD). In the early f, it was determined that Project was in need

of rehabilitation. The rehabilitation was financed with a private loan but tenant rents were subsidized under the moderate

rehabilitation program established under § 8(e)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) (1937 Act).

The moderate rehabilitation program, enacted in the late 1970s, -was designed to provide rental subsidies to encourage the moderate rehabilitation of multi-family residential projects for low and very low income families, in the case of projects that did not need substantial rehabilitation. Section 8 rental assistance payments were in an amount equal to the difference between 25% (subsequently raised to 30%) of the tenant's income and the project's contract rent. These § 8 payments were first made to the Project Owner pursuant to a § 8 Housing Assistance Payments Contract (HAP contract) in g. The term of the contract was for 15 years, to terminate on h. At present, rental assistance payments to Project are being made pursuant to § 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437 note) (MAHRA). These payments are made pursuant to annual Moderate Rehabilitation Renewal Contracts under MAHRA. With limited exception (such as a contract rent adjustment required pursuant to MAHRA) all the terms of Project Owner's current renewal contracts are the same as the HAP contracts that they succeed.

LAW AND ANALYSIS:

Section 38(a) provides for a general business credit against tax that includes the amount of the current year business credit. Section 38(b)(5) provides that the amount of the current year business credit includes the low-income housing credit determined

under § 42(a).

Section 42(a) provides that, for purposes of section 38, the amount of the low-income housing credit determined under § 42 for any taxable year in a 10-year credit period shall be an amount equal to the applicable percentage of the qualified basis of each qualified

low-income building.

Section 42(c)(2)(A) defines the term "qualified low-income building" as any building that is part of a qualified low-income housing project at all times during the period beginning on the first day in the compliance period on which the building is part of the project, and ending on the last day of the compliance period with respect to such building. The flush language following §42(c)(2)(B)

provides that this term "does not include any building with respect to which moderate rehabilitation assistance is provided, at any

time during the compliance period, under § 8(e)(2) of the United States Housing Act of 1937 (other than assistance under the Stewart B. McKinney Homeless Assistance Act) (as in effect on the date of the enactment of this sentence))."

Under § 42(i)(1), the compliance period is a period of 15 taxable years beginning with the first taxable year of the credit period with respect to any building. Under § 42(f)(1), the credit period for any building is the period of 10 taxable years beginning with the taxable year in which the building is placed in service, or, at the election of the taxpayer, the succeeding taxable year.

Section 42(e) provides that rehabilitation expenditures paid or incurred by the taxpayer with respect to any building shall be treated as a separate new building. These expenditures qualify for the low income housing credit if certain minimum expenditures are met and the other requirements of § 42 governing credit eligibility are met.

Prior to its repeal, § 8(e)(2) of the 1937 Act authorized HUD to make assistance payments directly or through public housing agencies pursuant to HAP contracts with owners who agreed to minimally upgrade or rehabilitate housing to keep the housing decent, safe, and sanitary. With certain exceptions (not relevant to this ruling), § 8(e)(2) of the 1937 Act was repealed by § 289(b) of the Cranston-Gonzalez National Affordability Housing Act in 1990. Pub. L. 101-625, Title II, § 289(b), Nov. 28, 1990, 104 Stat. 4128 (Cranston-Gonzalez Act). Section § 289(a) of the Cranston-Gonzalez Act provides, in part, that except for projects and programs for which binding commitments have been entered into prior to October 1, 1991, no new grants or loans shall be made after October 1, 1991, under § 8(e)(2) of the 1937 Act. Accordingly, because Project owner's 15-year HAP contract was made prior to the repeal of § 8(e)(2) of the 1937 Act, Project could continue to receive assistance under the 15-year HAP contract until h, when the HAP contract was due to expire.

Section 524(a) of MAHRA, as amended by § 531 of the Preserving Affordable Housing for Senior Citizens and Families into the

21st Century Act (12 U.S.C. 1701 note.), permits the renewal and funding of expiring § 8 HAP contracts, including contracts under

the moderate rehabilitation program. See also § 524(b)(3) of MAHRA, as amended.

Partnership believes Project may qualify for § 42(e) rehabilitation credits because a technical reading of § 42(c)(2) only prohibits buildings from qualifying for the credit that receive assistance under § 8(e)(2) of the 1937 Act, which was repealed, and not assistance under MAHRA.

We disagree. The renewals of Project Owner's original HAP contract under MAHRA are, in substance, continuations of the original 15-year HAP contract authorized under the § 8(e)(2) moderate rehabilitation program. Projects for which § 8(e)(2) HAP contracts

have been renewed are still subject to the requirements of the 1937 Act. Additionally, these projects are still subject to the Renewal of Expiring § 8 Project-Based Assistance Contracts regulations at 24 CFR 402, and to the § 8 moderate rehabilitation regulatory requirements that are made applicable through the renewed contract (in accordance with 24 CFR § 402.3).

In accordance with the power of attorney filed with the ruling request, we are sending a copy of this letter ruling to Partnership's authorized representative. In addition, a copy of this letter is being sent to the Chief, Examination Division in District.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as

precedent.

Sincerely yours,

Susan Reaman

Chief, Branch 5 Office of Associate

Chief Counsel