

IRC Section 42
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LEGEND

Taxpayer =
General Partner =
Limited Partner =
State B =
Project C =
City D =
Owner 1 =
Owner 2 =

a =
b =
c =
d =
e =
f =
g =
h =
i =
j =
k =
l =

Dear

This letter responds to your letter dated September 28, 2001, and subsequent correspondence, submitted on behalf of Taxpayer requesting a ruling that will waive for Project buildings the 10-year holding period for existing buildings under § 42(d)(2)(B)(ii) of the Internal Revenue Code, under authority of the exception for the acquisition of certain federally-assisted buildings provided in § 42(d)(6)(A). The Internal Revenue Service Office that will have examination jurisdiction over the Taxpayer is located in City D.

The relevant facts as represented in these submissions are set forth below.

FACTS

The Taxpayer is a State B limited partnership formed to acquire, rehabilitate, and operate a low-income housing tax credit project commonly known as Project C. The General Partner of Project C was organized to provide housing and related services to very-low and low income families. Project C was initially placed in service by the original owner, Owner 1 in a. Project C is comprised of b buildings, a laundry/community building and c buildings with d total living units. Project C is currently receiving assistance under section 515 of the Housing Act of 1949 on e units.

On f, Owner 2 was formed for the purpose of acquiring and rehabilitating Project C. Owner 2 applied for and received an allocation of § 42 low-income housing tax credits from the State B housing credit agency on g. On h, Owner 2 acquired Project C from Owner 1 by transfer of warranty deed.

Owner 2 tried unsuccessfully to consummate the syndication of the i low-income housing credits associated with Project C. These credits were subsequently returned to the State A housing credit agency in j. On k, State B housing credit agency issued j credits to Owner 2 for the acquisition and rehabilitation of Project C. Owner 2 was unable to meet the 10-percent

requirement of § 42(h)(1)(E)(ii). These credits were subsequently returned to the State B housing credit agency.

Taxpayer entered into a contract to purchase Project C from Owner 2 on 1. Taxpayer has applied for acquisition and rehabilitation low-income housing tax credits for Project C from the State B housing credit agency. Taxpayer makes the following representations concerning Project C:

- 1) Taxpayer will acquire Project C by purchase, as defined under section 179(d)(2), and as further restricted by section 42(d)(2)(D)(iii)(I);
- 2) Taxpayer acquired the buildings in Project C to provide affordable housing to qualified low-income households;
- 3) Taxpayer has applied to the state housing credit agency for an allocation of the low-income housing credit dollar amount in order that Taxpayer may comply with the limitations for low-income housing credits applicable to State B as required by section 42(h);
- 4) Project C was not previously placed in service by Taxpayer, or by a person who was a related person (as defined in section 42(d)(2)(D)(iii)(11)) to Taxpayer at the time the buildings were last placed in service;
- 5) As of the date of Taxpayer's application, the buildings in Project C are federally-assisted buildings as defined in section 1.42-2(c)(1);
- 6) As of the date of Taxpayer's application, federal mortgage funds for Project C were at risk within the meaning of section 1.42-2(c)(2);
- 7) There have been no nonqualified substantial improvements, as defined in section 42(d)(2)(D)(i), to any of Project C's buildings to the best of the Taxpayer's knowledge;
- 8) To the best of Taxpayer's knowledge no prior owner of Project C was allowed a section 42 low-income housing tax credit; and
- 9) All terms and conditions of section 42 and related sections, including substantial rehabilitation in excess of the minimum provided by section 42(e)(3), will be met except for section 42(d)(2)(B)(ii).

RULING REQUESTED:

Taxpayer requests the Service to waive, for the buildings in Project C, the 10-year holding period requirement for existing buildings of section 42(d)(2)(B)(ii), under the authority of the exception for the acquisition of certain federally-assisted buildings provided in section 42(d)(6)(A).

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 section 42(a).

For an existing building to qualify for the 30-percent present value housing tax credit, section 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 the most recent nonqualified substantial improvement of the building. Section 42(d)(6)(A) provides an exception to the 10-year holding period requirement of section 42(d)(2)(B)(ii). It states that a waiver may be granted for a federally-assisted building if the Secretary determines that the waiver is necessary-
 - (i) 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 (now Rural Housing Service, USDA-RHS), or
 - (ii) to avert a claim against a Federal mortgage insurance fund (or such Department or Administration) with respect to a mortgage which is so secured. Section 42(d)(6)(B) defines the term "federally-assisted building" as any building that is substantially assisted, financed, or operated under (i) section 8 of the United States Housing Act of 1937, (ii) section 221(d)(3) or 236 of the National Housing Act, or
 - (iii) section 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). Taxpayer represents that it is in compliance with these requirements.

Based solely upon the above facts, Taxpayer's representations, and the representations of USDA-RHS, we have determined that the buildings in Project C are federally-assisted within the meaning of section 42(d)(6)(B)(iii), and that federal funds are at risk under section 42(d)(6)(A)(i). Therefore, we rule as follows:

The 10-year holding period requirement of section 42(d)(2)(B)(ii) is waived for Taxpayer's acquisition of Project C provided Project C receives a low-income housing dollar amount allocation from the State B housing credit agency.

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 Taxpayer's costs of acquisition and rehabilitation of the buildings in Project C will qualify otherwise for the low-income housing credit under section 42.

This ruling is directed only to the Taxpayer 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 Taxpayer and its partners for the first taxable year in which the low-income housing credit for Project C is claimed.

Sincerely,

Harold E. Burghart

Assistant to the Chief, Branch 5

Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Attachments:

Copy of this letter

Copy for section 6110 purposes