

Internal Revenue Service
Department of the Treasury
Washington, DC 20224

Number: 200423020
Release Date: 6/4/04
Index Number: 42.04-07
Person To Contact:
Telephone Number:
Refer Reply To: CC:PSI:B05 - PLR-161788-03

Date: February 27, 2004

LEGEND

Taxpayer =
City C =
Building =
State =
Seller =
a =
b =
Address =
Year 1 =
c =
d =
e =
f =

Dear

This letter responds to Taxpayer's letter dated October 14, 2003,

and subsequent correspondence from Taxpayer's authorized representative, requesting a ruling that will waive for Building the 10-year holding period for existing buildings under § 42(d)(2)(B)(ii) of the Internal Revenue Code, pursuant to the authority 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 Taxpayer is located in City C.

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

FACTS

Taxpayer is a State limited partnership formed to acquire, rehabilitate, develop, own and operate Building. On a, Taxpayer entered into a binding contract to purchase Building. Deed transfer occurred on d. On f, Taxpayer received an allocation of § 42 credit from the agency in State responsible for making allocations of § 42 credits. Taxpayer intends to rehabilitate Building and qualify Building for both the acquisition and rehabilitation credit under § 42 the.

Building is a b-unit multi-story building located at Address. Building was originally purchased and placed in service by Seller in Year 1. The Department of Housing and Urban Development (HUD) designated Building for occupancy by elderly and disabled residents. The current loan on Building, in the amount of Sc, is insured by HUD. Building also receives substantial federal assistance under Section 8 of the United States Housing Act of 1937. In a letter dated e, HUD (1) stated that Building is a federally assisted building, (2) identified the source of Building's federal financing, (3) stated that a waiver of the 1 O-year holding requirement under § 42 is necessary to avert Federal mortgage funds being at risk, and (4) designated Building as a troubled building.

Taxpayer makes the following representations concerning Building:

- 1) Taxpayer's acquisition of Building will be by purchase within the meaning §179(d)(2), as applicable under § 42(d)(2)(D)(iii)(I);
- 2) To the best of Taxpayer's knowledge, there have been no nonqualified substantial improvements to Building since it was last placed in service;
- 3) Building 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 Building was last placed in service;
- 4) To the best of Taxpayer's knowledge no prior owner of Building was allowed a § 42 low-income housing tax credit;
- 5) As of the date of Taxpayer's application, Building is a federally assisted building as defined in § 1.42-2(c)(1); and
- 6) As of the date of Taxpayer's application, federal mortgage funds for Building were at risk within the meaning of § 1.42-2(c)(2).

RULING REQUESTED

Taxpayer requests the Service to waive, for Building, the 10-year holding period requirement of § 42(d)(2)(B)(ii), under the authority of the exception provided in § 42(d)(6)(A)(ii) and § 1.42-2.

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).

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 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 § 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's representations, including a written representation dated from HUD, indicate that these requirements have been satisfied.

Based solely upon the above facts, Taxpayer's representations, and the representations from HUD, we have determined that Building is federally-assisted within the meaning of § 42(d)(6)(B)(i), and that federal funds are at risk under § 42(d)(6)(A). 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 Building.

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 Building will otherwise qualify for the low-income housing credit under § 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 Building is claimed.

Sincerely yours,

Susan Reaman
Chief, Branch 5
Office of Associate Chief Counsel
(Passthroughs and Special Industries)
Enclosure: 6110 copy CC: