Private Letter Ruling 8752045, IRC Section 42

Sep. 29, 1987

This letter is in response to your letters dated . . . and . . . submitted on behalf of Partnerships A, B, C, D, E, F, and G, in which you request a private letter ruling pertaining to the low-income housing credit under section 42 of the Internal Revenue Code.

The following relevant facts have been submitted for consideration:

Corporation M, a N corporation authorized to do business in State O, is the sole general partner and a limited partner along with P in the following State O limited partnerships: Partnership A; Partnership B; Partnership C; Partnership D; Partnership E; Partnership F; and Partnership G. The seven Partnerships have each applied for, but have not yet received, taxpayer identification numbers. Each Partnership is in the process of negotiating with the owner of a different low-income housing project in the south central area of State O for the acquisition of such project and the assumption of the Farmers Home Administration (FmHA) loans secured by the properties in the project. Each of the apartment complex projects being negotiated for has been assisted or financed by outstanding loans made by FmHA under section 515 of the Housing Act of 1949.

In connection with the proposed claim for the credit that each Partnership will make with respect to its acquired project, Partnerships represent or imply that all terms and conditions of section 42 and related sections of the Code will be met except for one requirement; and Partnerships ask that the requirement be waived under the authority given the Secretary of Treasury by the statute.

Section 42(d) of the Code provides rules for determining the eligible basis of a new or existing building, a factor used in computing the amount of credit earned. In the case of an existing building that meets certain requirements, the eligible basis consists of the building's acquisition cost plus rehabilitation expenditures incurred within a limited period of time. Section 42(d)(2)(B)(ii), however, requires that as of the date the building is acquired by the taxpayer at least 10 years must have elapsed since the later of the date the building was last placed in service or the date of the most recent nonqualified substantial improvement of the building.

None of the properties will have been held by the transferor for the required 10-year period.

Section 42(d)(6)(A)(i) of the Code provides that on application by the taxpayer, the Secretary may waive the 10-year requirement of section 42(d)(2)(B)(ii) with respect to 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 FmHA.

Section 42(d)(6)(B)(iii) of the Code defines the term "federally assisted building" as including any building that is substantially assisted, financed, or operated under section 515 of the Housing Act of 1949.

We have examined Partnerships' representations and have determined that the buildings in the housing projects specified in our ruling below are federally assisted buildings within the meaning of section 42(d)(6)(B)(iii) of the Code, and that their proposed transfer to Partnerships has been approved by FmHA to avert foreclosures due to delinquencies and shortages in project accounts or to the transferors' non-compliance with the terms and conditions of the real estate mortgages.

Based on your letters dated . . . we rule as follows:

The requirement under section 42(d)(2)(B)(ii) of the Code is waived with respect to

Partnerships' acquisition during 1987 of the following buildings: Apartment Acquiring

Complex Partnership Location

A

B

C

D

E

F

G

No opinion is expressed or implied regarding whether Partnerships' cost of acquisition and rehabilitation of these buildings will qualify otherwise for the low-income housing credit under section 42.

This ruling is directed only to the taxpayers who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent. Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusions in the ruling. See section 16.04 of Rev. Proc. 87-1, 1987-1 I.R.B. 7, 17. However, when the criteria in section 16.05 of Rev. Proc. 87-1 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

In accordance with the powers of attorney on file, this letter is being sent to you as the

authorized representative of Partnerships A, B, C, D, E, F, and G. For each Partnership, please enclose a copy of this letter with each partner's federal income tax return in the year the transaction is consummated.