

Private Letter Ruling 8806010, IRC Section 42

Nov. 6, 1987

This letter is in response to your letters dated July 2 and October 1, 1987, submitted on behalf of Partnership, 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:

M, a limited partnership, and individual N are the general partners of Partnership, a State O limited partnership formed for purposes of investing in low and moderate income housing. Partnership's nominee, M, purchased the Project on November 7, 1986, from P (an unrelated party) pursuant to a purchase and sale agreement entered into with P on April 10, 1986, and subsequently assigned the purchase and sale agreement to Partnership. The Project is a 32-building, 172 unit garden apartment project located in City Q. Following the purchase of The Project only 38 of the 172 units were occupied prior to 1987. The Project is substantially assisted and operated under section 8 of the United States Housing Act of 1937. It is intended that the acquisition costs and certain of the rehabilitation expenditures will qualify for the credit under section 42 of the Code.

The Project was bought prior to foreclosure proceedings being instituted by the U.S. Department of Housing and Urban Development (HUD) as the loan secured by the Project was in default and had been insured under Section 221(d)(4) of the National Housing Act. The purchase of The Project averted assignment of the mortgage to HUD, which, in turn, averted a claim against the Federal Insurance Fund of HUD.

In connection with the proposed claim for the credit Partnership represents that all terms and conditions of section 42 and related sections of the Code will be met except for one requirement; and Partnership asks that such requirement be waived under the authority given the Secretary of Treasury by Section 42(d)(6)(A)(i).

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.

It has been represented that The Project was last placed in service on April 19, 1983, on which date it was purchased by P from . . . and . . . substitute trustees, and . . . . The Project was not previously placed in service by Partnership or by any person who was a related person with respect to Partnership as of the time The Project was previously placed in service. P did not make any "nonqualified substantial improvements" to The

Project as that term is defined in section 42(d)(6)(B) of the Code. Accordingly, 10 years have not elapsed since the later of the date The Project was last placed in service or the date of the most recent nonqualified substantial improvement of The Project.

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 the Department of Housing and Urban Development (HUD) or the Farmers' Home Administration.

Section 42(d)(6)(B)(i) of the Code defines the term "federally assisted building" as including any building that is substantially assisted, financed, or operated under section 8 of the United States Housing Act of 1937.

We have examined Partnership's representations and have determined that the buildings in The Project are federally assisted buildings within the meaning of section 42(d)(6)(B)(i) of the Code, and that their transfer to Partnership was approved by HUD to avert foreclosure due to delinquencies and shortages in project accounts or to P's non-compliance with the terms and conditions of the real estate mortgages.

Based on your letters dated July 2 and October 1, 1987, we rule as follows:

The requirement under section 42(d)(2)(B)(ii) of the Code is waived with respect to Partnership's acquisition of The Project in 1986.

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

This ruling is directed only to the taxpayer 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 power of attorney on file, this letter is being sent to you as the authorized representative of Partnership.

A copy of this letter should be filed with the income tax return of each partner in Partnership for the taxable year in which the transaction covered by this ruling is consummated.