

Private Letter Ruling 8806102, IRC Section 42

Nov. 6, 1987

This letter is in response to the letters from you and Mr. . . . dated May 15 and October 21, 1987, submitted on behalf of Partnership, in which you ask for a private letter ruling pertaining to the low-income housing credit under section 42 of the Internal Revenue Code.

The following relevant representations have been submitted for consideration:

Partnership bought The Building on July 1, 1987, from M and has rehabilitated it and placed it in service as a low-income housing project. The Building is a federally-assisted building under section 515 of the Housing Act of 1949. The Building was financed with the proceeds of a section 515 rural rental housing (RRH) loan that is presently in default. It is intended that the acquisition costs and certain of the rehabilitation expenditures will qualify for the credit under section 42 of the Code.

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.

The Building was not held by M for the 10-year period required by section 42(d)(2)(B)(ii) of the Code.

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 or the Farmers' Home Administration (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 Partnership's representations and have determined that The building is a federally-assisted building within the meaning of section 42(d)(6)(B)(iii) of the Code, and that The Building's transfer to Partnership was approved by FmHA to avert foreclosure due to delinquencies and shortages in project accounts or to M's non-compliance with the terms and conditions of the real estate mortgage.

Based on your letters dated May 15 and October 21, 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 Building during 1987.

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

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.

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