

Private Letter Ruling 8811046, IRC Section 42

This letter is in response to your letter dated November 6, 1987, and O's letter dated December 14, 1987, submitted on behalf of Partnership, in which a private letter ruling pertaining to the low-income housing credit under section 42 of the Internal Revenue Code is requested.

The following relevant representations have been submitted for consideration:

Partnership, organized under the laws of State M will file its U.S. partnership return of income with the Internal Revenue Service Center for Region N. The sole general partner of Partnership is J, a corporation formed under the laws of State M on a. J's outstanding shares of common stock are held equally by O and P, residents of State M. The sole initial limited partner of Partnership is K, a State M corporation and a subsidiary of L, which was formed in b to make investments in corporations and projects designed to promote community development in the area in which the Project is located.

The Project is divided into four phases. Legal title to the Phase II, Phase III, Phase IV and Phase V buildings is held, respectively, by Q, R, S, and T, each of which is a State M land trust. The entire beneficial interest in Q, R, S, and T is currently held, respectively, by U, V, W and X, each of which is a State M limited partnership. All of the buildings are under common management. Each Phase of the Project receives Housing Assistance Payments under the United States Department of Housing and Urban Development (HUD) section 8 program. Pursuant to separate Housing Assistance Payments Contracts with HUD, the present owner of each Phase of the Project leases dwelling units to eligible "Lower-Income Families" for use solely as private dwellings for stipulated rents, and each Phase receives rent subsidies from HUD.

Substantial rehabilitation was done on all the buildings in the Project in the early part of this decade, which was soon after the four Phases were acquired by their present owners. The owner of each Phase (except for Phase III) made an election under section 167(k) of the Code with respect to the rehabilitation. The rehabilitation expenditures in the case of each building in the three Phases (excluding those in Phase III) were sufficient to constitute a "nonqualified substantial improvement" within the meaning of section 42(d)(2)(D)(i)(I) of the Code.

Partnership has entered in a binding contract to purchase the Project (dated ). After acquiring the Project, Partnership plans to complete the rehabilitation of the buildings and place them in service as a low-income housing project or projects so as to 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 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.

As of the date the buildings in the Project will be acquired by Partnership, 10 years will not have elapsed since the later of the date the buildings were last placed in service or the date of the most recent nonqualified substantial improvement of the buildings.

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 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.

Section 1.42-2T of the Temporary Income Regulations contains requirements that must be satisfied to permit the waiver referred to in section 42(d)(6)(A)(i) of the Code.

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, that their transfer to Partnership was approved by HUD to avert foreclosure due to delinquencies and shortages in project accounts or to the present owners' non-compliance with the terms and conditions of the real estate mortgages, and that the requirements of section 1.42-2T of the temporary regulations have been satisfied.

Based on your letter and O's letter dated, respectively, November 6 and December 14, 1987, we rule as follows:

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

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. 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 each partner's income tax return for the taxable year in which the transaction covered by this ruling is consummated.

A copy of this letter is being sent to HUD in accordance with that agency's request.