

Private Letter Ruling 8813006, IRC Section 42

This letter is in response to your letter dated November 11, 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 representations have been submitted for consideration;

Partnership is made up of M, who is the managing partner, and partners N and O. Partnership purchased the Buildings from Mortgagor on a. The Buildings had been placed in service by Mortgagor in b and thus, as of the date of Partnership's acquisition of them, they had been in service less than 10 years.

In connection with Partnership's proposed claim for the credit under section 42 of the Code, Partnership represents that all terms and conditions of section 42 and related sections will be met except for the requirement in section 42(d)(2)(B)(ii). The ruling request in that 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.

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 Buildings are federally-assisted buildings within the meaning of section 42(d)(6)(B)(iii) of the Code, and that their transfer to Partnership was approved by FmHA to avert foreclosure due to delinquencies and shortages in project accounts or to mortgagor's non-compliance with the terms and conditions of the real estate mortgage.

Based on your letter dated November 11, 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 on a.

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. 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.

We are sending a copy of this letter to FmHA in accordance with that agency's request.