

Private Letter Ruling 8816018, IRC Section 42

Jan. 13, 1988

This letter is in response to your letters dated March 31, May 19, and September 14, 1987, submitted on behalf of Partnerships A, B, C, D, E, and F, 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:

Individual M is the sole general partner in each of the following limited partnerships, which are authorized to do business in State N: Partnership A; Partnership B; Partnership C; Partnership D; Partnership E; and Partnership F. Each Partnership is engaged in owning and operating low-income residential rental real estate, and during 1986 each Partnership acquired certain residential rental property that it proposes to renovate and place in service in 1987. Each of the apartment complexes involved has been assisted or financed by outstanding loans made by Farmers Home Administration (FmHA) under section 515 of the Housing Act of 1949. Partnerships A, B, C, D, E and F intend to claim the low-income housing credit (under section 42 of the Code) on the acquisition costs and rehabilitation expenditures.

In connection with the proposed claim for the credit each Partnership represents that all terms and conditions of section 42 and related sections of the Code will be met except for one requirement; and each 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 non-qualified substantial improvement of the building.

None of the properties were held by the respective transferors 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 FmHA or the Department of Housing and Urban Development.

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.

Section 1.42-2T of the Temporary Income Tax 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 Partnerships' representations and have determined that the buildings in the projects specified in the ruling below are federally-assisted buildings within the meaning of section 42(d)(6)(B)(iii) of the Code, and that their transfer to Partnerships was 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, and that the requirements of section 1.42-2T of the temporary regulations have been satisfied. The transferor of the property acquired by Partnership E was not a problem borrower according to FmHA's records; the property was sold voluntarily and therefore is not included in the waiver.

Based on your letters dated March 31, May 19, and September 14, 1987, we rule as follows:

The requirement under section 42(d)(2)(B)(ii) of the Code is waived with respect to Partnerships' acquisition during 1986 of the following buildings:

Acquiring Transferor Partnership Location

A

B

C

D

F

No opinion is expressed or implied regarding whether Partnerships' 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 taxpayers 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 the income tax return of each partner in Partnership for the taxable year in which the transaction covered by this ruling is consummated.

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, and F. 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.