

Private Letter Ruling 8816021, IRC Section 42

Jan. 15, 1988

This letter is in response to your letters dated May 20, 1987, July 28, 1987, and September 24, 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:

Individuals M and N are general partners in Partnership, a limited partnership doing business in State O. If the ruling as requested is issued, Partnership proposes to buy the Project from Owners and place it in service as a low-income housing project. The Project was placed in service in a. There have been no renovations since that time. The Project has been assisted or financed by outstanding loans made by the Farmers Home Administration (FmHA) under section 515 of the Housing Act of 1949. It is intended that the acquisition costs and rehabilitation expenditures, if any, will qualify for the credit under section 42 of the Code.

Partnership contemplates assuming a FmHA first mortgage on the Project in the approximate amount of \$b, paying a real estate commission of \$c, assuming liability for approximately \$d of delinquent taxes, providing necessary operating capital, and catching up deferred maintenance on the Project.

In connection with the proposed claim for the credit, Partnership represents that all terms and conditions of section 42 of the Code and related sections of the Code will be met except for the 10-year requirement of section 42(b)(2)-(B)(ii); 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.

If Partnership acquires the Project in 1988, it will not have been held by Owners for the required 10-year period.

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.

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 Partnership's representations and have determined that the building in the Project are federally-assisted buildings within the meaning of section 42(d)(6)(B)(iii) of the Code, and that their proposed transfer to Partnership has been approved by FmHA to avert foreclosures due to delinquencies and shortages in project accounts or to Owners' noncompliance 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 the representations in your letters dated May 20, July 28, and September 24, 1987, we rule as follows:

The 10-year requirement under section 42(d)(2)(B)(ii) of the Code is waived with respect to Partnership's proposed acquisition of the Project in 1988.

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

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 the income tax return of each partner in Partnership for the tax year in which the transaction covered by this ruling is consummated.