

Private Letter Ruling 8820049, IRC Section 42

Feb. 19, 1988

This is in response to your letter of November 12, 1987 submitted on behalf of Partnership, in which you ask for a private letter ruling that will waive the 10-year requirement for federally-assisted low-income housing projects in section 42(d)(2)(B)(ii) of the Internal Revenue Code as provided in section 42(d)(6).

The following relevant representations have been submitted for consideration:

Partnership bought the a buildings in the Project on b from M and has rehabilitated them and placed them in service as low-income housing. The a buildings were previously placed in service by M on c. Partnership has certified that the a buildings were not previously placed in service by Partnership, or by a person who was a related person (as defined in section 42(d)(2)(D)(iii)(II) of the Code) with respect to Partnership as of the time the buildings were previously placed in service. The Project consists of federally assisted buildings under section 515 of the Housing Act of 1949. The Project was partially financed under with the proceeds of section 515 rural rental housing (RRH) loans that are presently in default. It is intended that the acquisition costs and certain of the rehabilitation expenditures will qualify for the low-income housing credit under section 42.

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 the 10-year requirement provided by section 42(d)(2)(B)(ii), and Partnership asks that this requirement be waived under the authority granted the Secretary of the 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 an exception to the 10-year requirement of section 42(d)(2)(B)(ii) to the effect that, on application by the taxpayer, the Secretary may waive this requirement 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)(iii) 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 National Housing Act of 1937, section 221(d)(3) or 236 of the National Housing Act of 1934, or 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) 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)(iii) of the Code, and that the Project's transfer to Partnership was approved by the Farmers' Home Administration to avert foreclosure due to delinquencies and shortages in project accounts or to M's 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 your letter dated November 17, 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.

No opinion is expressed or implied regarding whether Partnership's costs of acquisition and rehabilitation of the buildings in the Project 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. 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.

We are sending a copy of this letter to the Farmer's Home Administration in accordance with that agency's request.