

**Private Letter Ruling 8839020, IRC Section 42**

June 29, 1988

This letter is in response to your letter dated February 26, 1988 and subsequent correspondence submitted on behalf of the Partnership, in which you, as General Partner, ask for 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:

The Partnership is a limited partnership organized under the laws of State K. The Partnership is purchasing the Complex from Corp L, a State K corporation not in good standing.

The Partnership executed a real estate and purchase agreement and receipt for earnest money on t(3) from Corp L through Corp L's Trustees, M and N. As consideration for the acquisition the Partnership will assume mortgages to the United States Department of Agriculture, Farmers Home Administration (FmHA) totaling \$b. The two units of the Complex were originally placed in service by Corp L in t(1) and t(2). There have been no additional improvements to the Complex since that time.

The Complex is a federally assisted building under section 515 of the Housing Act of 1949. The Complex was financed with the proceeds of a section 515 rural rental housing (RRH) loan that is presently in default. The Partnership intends that the \$b acquisition cost will qualify for the low-income housing credit under section 42 of the Code.

In connection with the proposed claim for the low-income housing credit, the Partnership represents that all the requirements of section 42 of the Code will be met except for the 10-year requirement of section 42(d)(2)(B)(ii), and the 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 qualified low-income building, a factor used in computing the amount of credit earned. In the case of an existing building the eligible basis may, at the election of the taxpayer, consist 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 it was last placed in service (or since the date of the most recent nonqualified substantial improvement of the building).

The entire Complex was not held by Corp L for the required 10-year period of time. Section 42(d)(6)(A)(i) of the Code provides, in part, that the taxpayer may apply for and the Secretary may grant waiver of the 10-year requirement in the case of any building that is substantially assisted, financed, or operated under section 515 of the Housing Act of 1949. Waiver is appropriate if, after consulting with the Secretary of Agriculture, the Secretary determines that such waiver is necessary to avert an assignment to the (FmHA) of the mortgage secured by property in the project (of which the building is a part).

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) of the Code.

We have examined the FmHA letter to the Partnership that was submitted with the ruling request and are satisfied that the transfer to the Partnership has been approved by FmHA to avert foreclosure due to delinquencies and shortages in project accounts or to Corp L's

non-compliance with the terms and conditions of the real estate mortgage, and that the requirements of section 1.42-2T of the temporary regulations have been satisfied. Based on your correspondence and on the letter from FmHA enclosed therewith we rule as follows:

The requirement under section 42(d)(2)(B)(ii) of the Code is waived with respect to the Partnership's acquisition of the Complex during 1988, the Complex being an existing RRH 515 Project located in City Q.

No opinion is expressed or implied regarding whether the Partnership's costs of acquisition of the Complex 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 is being sent to FmHA in accordance with that Agency's request. In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.