

Private Letter Ruling 8843015, IRC Section 42

Jul. 28, 1988

This letter is in response to your letter dated February 19, 1988, 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, a State O limited partnership, acquired the Project from the Farmers Home Administration (FmHA) on a for the purchase price of \$b. The disposition of sale was a credit sale from the FmHA to M, trust N, with 100 percent of the beneficial interest to Partnership.

The Project was originally placed in service in c. The original mortgagor was receiving federal assistance for the housing project from the FmHA under section 515 of the Housing Act of 1949, but the Project had been designated a "troubled project" by FmHA and had been returned to the FmHA's inventory. The Project in the hands of Partnership continues to receive the federal assistance under section 515.

In connection with the 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); 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.

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--

(i) 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 FmHA,

(ii) to avert a claim against a Federal mortgage fund (or such Department or Administration) with respect to a mortgage which is so secured, or

(iii) to the extent provided in regulations, by reason of other circumstances of financial distress. The Project was first placed in service in c, and was acquired from the original mortgagor on a; therefore, as of the date of the acquisition, 10 years had not elapsed since the date the Project was last placed in service. The Project does not meet the requirement of section 42(d)(2)(B)(ii) of the Code and there is no statutory provision for waiver of the requirement under these circumstances. We must decline to rule as requested.

Since the requirement cannot be waived the low-income housing credit for acquisition of an existing building under section 42(d) of the Code is not available to Partnership with respect to the Project. No opinion is expressed or implied regarding whether Partnership's rehabilitation expenditures on the Project, if any, will qualify for the credit under other provisions of 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 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.