

Private Letter Ruling 8851046, IRC Section 42

Sep. 27, 1988

This letter is in response to your letter dated August 18, 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 is a State M limited partnership that was formed pursuant to a Certificate of Formation and Limited Partnership Agreement dated a and filed for record, on b, with the County Recorder, County N of State M. The general partners of Partnership were O and P, both State M corporations, and the limited partner was Q, a State M limited partnership. On c, a First Amended and Restated Certificate and Agreement of Limited Partnership, dated as of d was filed with the County Recorder, County N, State M. The First Amended and Restated Certificate and Agreement of Limited Partnership admitted R, a corporation organized under the laws of United States, as a special limited partner to Partnership. Thus, the current general partners are O and P, the current limited partner is Q and the current special limited partner is R.

Partnership was formed to acquire, rehabilitate, and operate The Project, an apartment complex for low-income persons. The Project is an e-unit housing development comprised of f buildings located in City S. It was intended that the acquisition and rehabilitation of The Project would qualify for the low-income housing tax credit under section 42 of the Code.

Partnership acquired legal title to The Project on b. Partnership's purchase price for The Project was \$g, which amount was paid to the U.S. Department of Housing and Urban Development (HUD). HUD had acquired legal title to The Project on h from T, a non-profit corporation, pursuant to a foreclosure of its mortgage on The Project. (The mortgage had been assigned to HUD by the original mortgagee.) T had held legal title to The Project since i, more than 10 years prior to the date HUD took title to the project upon foreclosure of its mortgage.

Partnership has requested a ruling that the acquisition of The Project by HUD on h pursuant to its foreclosure action is not considered a new placed in service date for purposes of section 42(d)(2)(B)(ii) of the Code.

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 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 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. The temporary regulations do not permit the waiver for property already foreclosed upon by a government agency.

However, the waiver is not necessary if the property foreclosed upon by a government agency already meets the requirements of section 42(d)(2)(B)(ii) of the Code. Congress intended that for purposes of determining whether a building meets the 10-year ownership rule of section 42(d)(2)(B)(ii) of the Code, if a governmental unit or qualified nonprofit organization (as defined in section 42(h)(5)(C)) acquires the building more than 10 years from the date the building or a substantial improvement to the building was last placed in service, and all the income from such property in the hands of the governmental unit is exempt from federal income taxation, then the acquisition of the building by the governmental unit or qualified nonprofit organization will not be viewed as a new placed-in-service date.

In this case, when HUD acquired The Project by foreclosure on h, more than 10 years had elapsed since The Project had last been placed in service on i. In accordance with the foregoing facts, HUD's acquisition date does not constitute a new placed in service date for purposes of section 42(d)(2)(B)(ii) of the Code.

Based on the representations in your letter dated April 7, 1988, we rule as follows:

The acquisition of The Project by HUD on h does not constitute being "placed in service" for purposes of the 10-year ownership rule set forth in section 42(d)(2)(B)(ii) of the Code.

No opinion is expressed or implied regarding the application of any other provisions of the Code or regulations or to whether 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.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. This ruling is issued under the authority of Rev. Proc. 87-7, 1987-1 C.B. 542, that enables the Service to issue rulings that previously would

have been precluded by the provisions of section 5.07(2) of Rev. Proc. 88-1, 1988-1 I.R.B. 11. Therefore, this ruling may be modified or revoked by the Service. However, when the criteria in section 16.05 of Rev. Proc. 88-1 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

In accordance with the power of attorney on file, this letter is being sent to you as the authorized representative of Partnership.

A copy of this letter should be filed with the federal income tax return of each partner for the taxable year in which the transaction covered by this ruling is consummated.