

Private Letter Ruling 8852016, IRC Section 42

Sep. 27, 1988

This letter is in response to your letter dated August 10, 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:

L, a State M corporation, is the Managing General Partner of Partnership, a State N limited partnership that was formed for the purpose of acquiring, rehabilitating, and operating the Project, which is a low-income housing project. Partnership entered into a binding contract on a to acquire the Project from Seller, a State O nonprofit corporation that had placed the Project in service on b. The purchase price is to be \$c.

At the time of closing, Partnership will deliver to Seller an all-inclusive residual promissory note in the amount of \$d with an interest rate of e percent per annum, compounded semiannually, which note includes:

(a) the Mortgage Note in the Principal Amount, as of f, of \$g which the U.S. Department of Housing and Urban Development (HUD) has endorsed for FHA-insurance (the HUD Note),

(b) the Flexible Subsidy loan in the outstanding principal amount, as of f, of \$h on which interest has accrued (the Flexible Subsidy Note), and

(c) the All-Inclusive Residual Note, dated b, in the principal amount of \$i with interest at j percent per annum (the Residual Note).

The mortgagees for the HUD Note, the Flexible Subsidy Note, and the Residual Note are, respectively, P, HUD, and Q; and in the same order the mortgagors for these notes are Q, Q, and R.

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 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 or section 221(d)(3) of the National Housing Act of 1934.

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.

Partnership certifies that the buildings comprising the Project were not previously placed in service by Partnership or related party as defined in section 42 of the Code, and that the buildings are federally assisted in that (i) the first mortgage is financed and insured under section 236 of the National Housing Act of 1934; (ii) the Project is subject to a Flexible Subsidy Note pursuant to section 201 of the Housing and Community Development Amendments of 1978; and (iii) some of the apartment units in the Project receive subsidies under section 8 of the United States Housing Act of 1937.

We have examined Partnership's representations and have determined that the buildings in the Project are federally-assisted buildings within the meaning of sections 42(d)(6)(B)(i) and 42(d)(6)(B)(ii) of the Code, and that the Project's transfer to Partnership was approved by HUD to avert foreclosure due to delinquencies and shortages in project accounts or to Seller's non-compliance 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 letter dated August 10, 1988, we rule as follows:

The 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.

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

We are sending a copy of this letter to HUD in accordance with that agency's request.