

Private Letter Ruling 8905031, IRC Section 42

November 4, 1988

This is in response to a letter of August 19, 1988, submitted on your behalf by your designated representative, asking for a private letter ruling that will waive the 10-year holding period requirement for federally-assisted low-income housing projects in section 42(d)(2)(B)(ii) of the Internal Revenue Code, under the authority of the exception provided in section 42(d)(6)(A) of the Code.

The following relevant representations have been submitted:

The Project is an apartment complex consisting of a one bedroom apartment units on one tract of land in City N. The units were last placed in service on b. Federal assistance for the Project was provided by the Farmers' Home Administration (FmHA) under section 515 of the Housing Act of 1949.

On c, Taxpayer entered into a binding contract to acquire the Project from the mortgagee, M, and proposes to place the units in service as low-income rental housing. The amount of consideration to be paid by Taxpayer for the Project is \$ d, which includes the value of any liabilities assumed. Taxpayer has represented that the acquisition of the Project is to be by purchase as defined in section 179(d)(2) of the Code.

The Project is subject to an outstanding mortgage of \$ e. The present mortgagee is M and Taxpayer will assume the FmHA indebtedness (first mortgage financing) upon closing. Taxpayer has been informed that the Project is a "troubled project" by the FmHA National Office and has attached the required documentation to the request for ruling.

Taxpayer has made the following representations with respect to the Project:

(1) The a units in the Project were not previously placed in service by Taxpayer or by a person who was a related person (as defined in section 42(d)(2)(D)(iii)(11) of the Code) with respect to Taxpayer at the time the buildings were last placed in service;

(2) As of c, the a buildings were "federally-assisted buildings" as defined in section 1.42-2T(c)(1) of the Temporary Income Tax Regulations.

(3) As of c, federal mortgage funds with respect to the Project were at risk within the meaning of section 1.42-2T(c)(2);

(4) There have been no nonqualified substantial improvements to the subject apartment units since they were last placed in service.

(5) No prior owner of the Project was allowed a low-income housing credit under section 42 of the Code.

In connection with the proposed claim for the credit, Taxpayer represents that all terms and conditions of section 42 and related sections of the Code will be met except for the 10-year holding period requirement provided by section

42(d)(2)(B)(ii), and Taxpayer 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) of the Code provides an exception to the 10-year holding period 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 --

(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 (HUD) or to the Farmers' Home Administration;

(ii) to avert a claim against a federal mortgage insurance fund (of such Department or

Administration) with respect to a mortgage which is so secured, or

(iii) to the extent provided by regulations, by reason of other circumstances of financial distress.

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 United States 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. Taxpayer has stipulated that he is in compliance with these requirements.

After examining the representations we have determined that the Project was transferred to M as the result of foreclosure due to noncompliance with the terms and conditions of the real estate mortgages. The buildings in the Project are federally-assisted buildings, within the meaning of section 42(d)(6)(B)(iii) of the Code, and the Projects transfer to Taxpayer was approved by the FmHA. In addition, the requirements of section 1.42-2T of the temporary regulations have been satisfied.

Based on your letter dated August 19, 1988, we rule as follows:

The 10-year holding period requirement under section 42(d)(2)(B)(ii) of the Code is waived with respect to Taxpayer's proposed acquisition of the Project.

No opinion is expressed or implied regarding whether Taxpayer'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 Taxpayer's federal income tax return for the taxable year in which the transaction covered by this ruling is consummated.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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