

Private Letter Ruling 8918071, IRC Section 42

This is in response to a letter dated September 27, 1988, in which A and B ask for a private letter ruling that will waive the 10- year ownership 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) with respect to the Project.

The following relevant representations have been submitted for consideration:

A and B are the proposed two purchasers of the Project. A and B will form Partnership upon receipt of the requested waiver and transfer the Project to Partnership. Thereafter, Partnership will own and operate the Project.

A and B entered into a binding contract on a to acquire an *** unit apartment building, the Project, and desire to place it in service as low-income rental housing. The Project was last placed in service by the Sellers on b. There have been no nonqualified substantial improvements to the Project since that time. A and B have certified that the Project was not previously placed in service by them, or by person who was a related person (as defined in section 42(d)(2)(D)(iii)(II) of the Code) with respect to A and B as of the time the Project was last previously placed in service.

The purchase agreement dated a calls for a purchase price of \$ c, which represents the assumption of a mortgage of \$ d, a tenant security deposit liability of \$ e, and a real estate mortgage liability of \$ f.

All buildings in the Project are federally-assisted under section 515 of the Housing Act of 1949. The Project was partially financed with the proceeds of a Farmers Home Administration (FmHA) insured mortgage. It is intended that A and B's acquisition costs and certain of the rehabilitation expenditures with respect to the Project will qualify for the low-income housing credit under section 42 of the Code.

In connection with the proposed claim for the credit, A and B represent that all terms and conditions of section 42 and related sections of the Code will be met except for the 10-year ownership requirement in section 42(d)(2)(B)(ii), and A and B ask that this requirement be waived under the authority granted the Secretary 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 an exception to the 10-year ownership 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 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 FmHA.

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)(i) of the Code. A and B stipulate in the request for this ruling that it is in compliance with these requirements.

We have examined A and B's representations and have determined that the building in the Project is a federally-assisted building within the meaning of section 42(d)(6)(B)(iii) of the Code, and that the Project's transfer to A and B was approved by the FmHA to avert foreclosure due to Sellers noncompliance with the terms and condition of the real estate mortgage, and that the requirements of section 1.42-2T of the temporary regulations have been satisfied.

Based on the information in your letter dated September 27, 1988, we rule as follows:

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

No opinion is expressed or implied regarding whether A and B's costs of acquisition and rehabilitation of the building in the Project will otherwise qualify for the low-income housing credit under section 42 of the Code.

This ruling is directed only to the taxpayers 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 the FmHA in accordance with the agency's request.