

Private Letter Ruling 8920010, IRC Section 42

February 6, 1989

This is in response to your letter dated August 18, 1988, requesting a waiver of the 10-year holding period requirement contained in section 42(d)(2)(B)(ii) of the Internal Revenue Code ("the Code"). The facts and representations as submitted are substantially as follows.

Taxpayer is located in City A. Its taxpayer identification number is a. Taxpayer, a limited partnership, entered into a binding contract on d with F to acquire a building located in City C, and a building located in City E ("the Buildings"). F is the original owner of the Buildings, and placed them in service at the completion of their construction. Consideration for acquisition and repair will be in the form of an assumption of existing Farmers Home Administration (FmHA) debt totaling e. The actual amount will change depending on the final closing date. Taxpayer represents that the acquisition is by purchase as defined in section 173(d)(2) of the Internal Revenue Code, as applicable under section 42(d)(2)(D)(iii)(I) of the Code.

The FmHA has stated that the building in City E became operational on f, and the building in City C became operational on j. Taxpayer represents that neither Taxpayer nor a related person as defined in section 42(d)(2)(D)(iii)(II) of the Code previously placed the Buildings in service.

In a letter from the United States Department of Agriculture dated *** submitted by Taxpayer, the Buildings have been designated a "troubled project" based on a determination that they had histories of financial distress and mortgage defaults. Taxpayer represents that as of the earlier of the time of acquisition of the Buildings or the time of application for the waiver, the Buildings are federally assisted buildings as defined in section 1.42-2T(c)(1) of the Temporary Income Tax Regulations. F financed the Buildings with the proceeds of a Section 515 Rural Rental Housing (RRH) loan that is presently in default.

Taxpayer represents that as of the earlier of the time of acquisition of the building or the time of application for this waiver, the Federal mortgage funds are at risk within the meaning of section 1.42-2T(c)(2) of the temporary regulations. Federal mortgage funds at risk are the h of first mortgage debt under section 515 of the Housing Act of 1949. The outstanding mortgage amount of h is an FmHA section 515 first mortgage loan that Taxpayer will assume.

Taxpayer represents that no prior owner was allowed a low-income housing tax credit under section 42 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 the low-income housing credit. In the case of an existing building that meets certain criteria, 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 non-qualified substantial improvement of the building.

Section 42(d)(6)(A)(i) of the Code provides that on application of the taxpayer the Secretary may waive the 10-year requirement of section 42(d)(2)(B)(ii) for a 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 or the Farmers' Home Administration (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 515 of the Housing Act of 1949.

Section 1.42-2T of the temporary regulations contains requirements that must be satisfied to permit the waiver referred to in section 42(d)(6)(A)(i) of the Code.

Based upon the above facts and representations, we have determined that the buildings are federally assisted buildings within the meaning of section 42(d)(6)(B)(iii) of the Code, and the requirements of section 1.42-2T of the temporary regulations have been satisfied.

Therefore, based upon the above facts and representations, the requirement under section 42(d)(2)(B)(ii) of the Code is waived with respect to Taxpayer's acquisition of the Buildings during 1988.

No opinion is expressed or implied regarding whether Taxpayer's costs of acquisition and rehabilitation of the buildings 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. Because this ruling is issued under the authority of Rev. Proc. 88-18, 1988-20 I.R.B. 32, and section 5.07(3) of Rev. Proc. 89-1, 1989-1 I.R.B. 8, this ruling may be modified or revoked by adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusions in the ruling. However, when the criteria in section 16.05 of Rev. Proc. 89-1 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

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

