

Private Letter Ruling 8938053, IRC Section 42

June 28, 1989

This is in response to your letter dated April 7, 1989, which was received by this office on April 25, 1989, and subsequent correspondence submitted on behalf of the Partnership, in which you, as Vice President of L, the general partner of the Partnership, ask for a private letter ruling that will waive the 10-year holding period requirement in section 42(d)(2)(B)(ii) of the Internal Revenue Code with respect to the proposed acquisition of the Facility under the authority of the exception for certain federally-assisted buildings provided in section 42(d)(6)(A)(i) of the Code.

The following relevant representations have been submitted for consideration:

The Project consists of a apartment units in d buildings located in City N and formerly placed in service by P, a State O not-for- profit corporation, on t1. Federal assistance for the Project was provided by the U.S. Department of Housing and Urban Development (HUD) under section 221(d)(3) of the National Housing Act of 1934 and section 8 of the United States Housing Act of 1937.

The Partnership is a State O limited partnership with L as the general partner.

On t2 R, a State M not-for-profit corporation, entered into an interim contract to acquire the a units in the Project from P. On t3 the Partnership entered into a binding contract to acquire the a units from R. Both contracts are subject to HUD's approval of Transfer of Physical Assets. Partnership proposes to place the units in service as low-income rental housing. The amount of consideration to be paid by the Partnership for the Project is \$ b, which includes the value of any liabilities assumed by the Partnership. The Partnership certifies 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 in the approximate current principal amount of \$ c, which is insured by HUD pursuant to section 221(d)(3) of the National Housing Act of 1934. The present mortgagor is P and O is the mortgagee. The Partnership will assume that mortgage on closing.

The Partnership has been informed that the Project is a "troubled project" by the National Office of HUD, Multiple Family Housing Management Division. Such certification has also been furnished to the Internal Revenue Service.

The Partnership has made the following representations with respect to the Project:

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

(2) As of t2, the buildings comprising the Projects were "federally-assisted buildings" as defined in section 1.42-2T(c)(1) of the Temporary Income Tax Regulations.

(3) As of t2, federal mortgage funds with respect to the Project were at risk within the meaning of section 1.42-2(T)(c)(2) of the temporary regulations;

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

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

In connection with the proposed claim for the credit, the Partnership 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 the Partnership 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 buildings 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 that is so secured.

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 regulations contains requirements that must be satisfied to permit the waiver referred to in section 42(d)(6)(A) of the Code. The Partnership has stipulated that it is in compliance with these requirements.

We have examined the Partnership's representations and have determined that the buildings in the Project are federally-assisted buildings within the meaning of section 42(d)(6)(B)(iii) of the Code, and that the Project's transfer to the Partnership was approved by HUD to avert foreclosure due to delinquencies and shortages in project accounts or to P's noncompliance 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 your letter dated April 7, 1989 and subsequent correspondence, 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 the Partnership's proposed acquisition of the Project.

No opinion is expressed or implied regarding whether the 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. A copy of this letter should be filed with the income tax return of each partner in the 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 HUD in accordance with that agency's request.

Sincerely yours,

James F. Ranson Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)