

Private Letter Ruling 8945014, IRC Section 42

August 11, 1989

This is in response to your letter of June 21, 1989, and subsequent correspondence submitted on behalf of the Partnership, in which you ask 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 with respect to the proposed acquisition of the Projects under the authority of the exception provided in section 42(d)(6)(A)(i) of the Code.

The following relevant representations have been submitted for consideration:

Project 1 consists of a apartment units located in City 1 and formerly placed in service by P1 on t1. Project 2 consists of b apartment units located in City 2 and placed in service by P2 on t2. Project 3 consists of c apartment units located in City 3 and placed in service by P3 on t3. Project 4 consists of d apartment units located in City 4 and placed in service by P4 on t4. Project 5 consists of d apartment units located in City 5 and placed in service by P5 on t5.

The Partnership is a State O limited partnership with K, L and Corp M as the general partners. K and L, the two individual general partners of the partnership, each own 50 percent of the stock of Corp M. K and L are also equal owners of the stock of Corp N, the firm that will manage the five Projects. Corp M was formed for the purpose of protecting the respective ownership positions of K and L in the five Projects in the event of the untimely death or disability of either of them.

On t6 the Partnership entered into a binding contract to acquire the units in the projects from P1 through P5 and proposes to place all of the units in service as low-income rental housing. The amounts of consideration to be paid by the Partnership for the Projects: \$ e for Project 1; \$ f for Project 2; \$ g for Project 3; \$ h for Project 4; and \$ i for Project 5. These amounts of consideration include the values of any liabilities assumed by the Partnership. The Partnership certifies that the acquisition of the Projects is to be by purchase as defined in section 179(d)(2) of the Code.

The Projects are subject to outstanding mortgages of approximately: \$ j for Project 1; \$ k for Project 2; \$ l for Project 3, \$ m for Project 4; and \$ n for Project 5. The present mortgagors are: P1 for Project 1; P2 for Project 2; P3 for Project 3; P4 for Project 4; and P5 for Project 5. The Farmers Home Administrative (FmHA) is the mortgagee for all of the projects. The Partnership will assume the mortgages on all of the projects on closing.

The Partnership has been informed that the Projects are "troubled projects" by the National Office of FmHA Family Multiple Housing Servicing and Property Management Division. Such certifications have also been furnished to the Internal Revenue Service.

The Partnership has made the following representations with respect to the Projects.

(1) The units in the Projects 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 t6, the buildings were "federally-assisted buildings" as defined in section 1.42-2T(c)(1) of the Temporary Income Tax Regulations.

(3) As of t6, federal mortgage funds with respect to the Projects 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 units since they were last placed in service.

(5) No prior owner of the units was allowed a low-income housing credit under section 42 of the Code 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 with respect to the units 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 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 FmHA.

(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 Projects are federally-assisted buildings within the meaning of section 42(d)(6)(B)(iii) of the Code, and that the Projects' transfer to the Partnership was approved by FmHA to avert foreclosure due to the delinquencies and shortages in project accountants or to the noncompliance of P1 through P5 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 6, 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 Projects.

No opinion is expressed or implied regarding whether the Partnership's costs of acquisition and rehabilitation of the buildings in the Projects 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 FmHA in accordance with that agency's request.

Sincerely yours,

James F. Ranson

Chief, Branch 5

Office of Assistant Chief Counsel

(Passthroughs and Special Industries)

