

Private Letter Ruling 9004013, IRC Section 42

Date: October 27, 1989

Dear ***

This is in response to your letters dated July 31, 1989, and August 28, 1989, asking for a private letter ruling that will waive for the Project 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)(i).

The Project is a f story high rise concrete and masonry apartment complex of a apartment units on one tract of land located in City N. The units were last placed in service by a not-for-profit church organization on b and Federal assistance for the Project was provided by the U.S. Department of Housing and Urban Development (HUD) with a g percent rent subsidy under section 8 of the United States Housing Act of 1937. The Project is subject to a HUD Purchase Money Mortgage in the amount of \$e with HUD as the mortgagee.

On c, Taxpayer entered into a binding contract to acquire the Project from the current owner, 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, and does not include the assumption of any prior outstanding liability. Taxpayer has represented that the acquisition of the Project is to be by purchase as defined in section 179(d)(2) of the Code.

Taxpayer has been informed that the Project is a "troubled project" by the National Office of HUD 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)(II) of the Code) with respect to Taxpayer at the time the buildings were last placed in service;
- (2) As of c, the a building was a "federally-assisted building" 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 of 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 or to the Farmer's 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 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, 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 submitted, we have determined that the Project was transferred to M as the result of foreclosure due to the bankruptcy of the current owner. The building in the Project is a federally-assisted building, within the meaning of section

42(d)(6)(B)(iii) of the Code, and the Project's transfer to Taxpayer was approved by HUD. In addition, the requirements of section 1.42-2T of the temporary regulations have been satisfied.

Based on the above representations as submitted in your letters dated July 31, 1989, and August 28, 1989, 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 Taxpayer's federal income tax return for the taxable year in which the transaction covered by this ruling is consummated.

We are sending a copy of this letter to 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)