

Private Letter Ruling 9005067, IRC Section 42

Date: November 9, 1989

Dear ***

This is in response to your letter of September 21, 1989, and subsequent correspondence submitted on behalf of the Partnership, in which you, as a general partner of the Partnership, ask for a private letter ruling that will waive for Project 1 and Project 2 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).

The following relevant representations have been submitted for consideration:

Each Project consists of a apartment units located in City N. Project 1 was formerly placed in service by Company P on t1, and Project 2 was formerly placed in service by Company Q on t2. Federal assistance for the Projects was provided by the Farmers' Home Administration (FmHA) under section 515 of the Housing Act of 1949.

The Partnership is a State O limited partnership with K, L and M as the general partners. On t2 the Partnership entered into a binding contract to acquire the Projects from Companies P and Q for which R is the general partner and proposes to place the units in service as low-income rental housing. The amount of consideration to be paid by the Partnership for the Projects is c, which includes the value 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 totaling approximately \$d. The present mortgagors are Companies P and Q and FmHA is the mortgagee. The Partnership will assume these mortgages 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 certification has also been furnished to the Internal Revenue Service.

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

(1) The e 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)(n)(iii)(II) of the Code) with respect to the Partnership at the time the buildings were last placed in service.

(2) As of t3, the e units were "federally-assisted buildings" as defined in section 1.42-2T(c)(1) of the Temporary Income Tax Regulations.

(3) As of t3, 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 e units since they were placed in service.

(5) No prior owner of the e 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 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 the Farmers' Home Administration,

(ii) to avert a claim against a federal mortgage insurance fund (of such Department of 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 delinquencies and shortages in project accounts or to the noncompliance of Companies P and Q 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 September 21, 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 cost 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 Partnership 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 the agency's request.

Sincerely yours,

James Ranson

Chief, Branch 5

Assistant Chief Counsel

(Passthroughs & Special Industries)