

Private Letter Ruling 9009021, IRC Section 42

Reference(s): Code Sec. 42;

10-Year Holding Period Requirement is Waived.

The Service has waived the 10-year holding period requirement for Federally assisted low-income housing projects. A partnership acquired a project that it plans to convert to low-income housing and assumed either a Farmer's Home Administration (FmHA) or a U.S. Department of Housing and Urban Development (HUD) loan. FmHA and HUD have labeled these projects as "troubled projects." Under section 42(d)(2)(B)(ii), the HUD secretary may waive the 10-year holding period requirement if the secretary determines that a waiver is necessary to avert an assignment of the mortgage to HUD or the FmHA or to avert a claim against a Federal mortgage insurance fund.

Date: November 30, 1989

Dear ***

This is in response to your letter of July 27, 1989, and subsequent correspondence submitted on behalf of Partnership 1, in which you, as President of Corp P, which is the general partner of Partnership 1, ask 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 with respect to the proposed acquisition of the Project 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:

The Project consists of a apartment units housed in d buildings, located in City N and formerly placed in service by Partnership 2 on t1. Federal assistance for the Project was provided by the Farmer's Home Administration (FmHA) under section 515 of the Housing Act of 1949.

The Project is currently owned by Partnership 2 of which M is a general partner with an f percent partnership interest. The Project will be transferred to Partnership 1 in which Corp P is the general partner. M owns e percent of the issued common stock of Corp P. After the transfer of the Project to Partnership 1, Corp P will own d percent of Partnership 1. The remaining g percent will be owned by unrelated parties. Therefore, Partnership 1 and Partnership 2 are not related persons as defined in section 179(d)(2) of the Code.

On t2 Partnership 1 signed an "Option to Purchase Real Property" with FmHA to acquire the a units in the Project by assuming the mortgage indebtedness of Partnership 2. Partnership 1 proposes to place the units in service as low-income rental housing. The amount of consideration to be paid by Partnership 1 for the Project is \$b, which includes the amount of any liabilities assumed by Partnership 1. You have certified that the acquisition is to be by purchase as defined in section 179(d)(2).

The Project is subject to an outstanding mortgage of approximately \$c. The present mortgagor is Partnership 2 and FmHA is the mortgagee. Partnership 1 will assume that mortgage on closing.

Partnership 1 has been informed that the Project is a "troubled project" 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.

You have 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 Partnership 1 at the time the buildings were last placed in service;

(2) As of t2, the a units 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 1.42-2T(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 of the Code for the buildings.

In connection with the proposed claim for the credit, Partnership 1 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 Partnership 1 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 Farmer's 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. Partnership 1 has stipulated that it is in compliance with these requirements.

We have examined Partnership 1'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 Partnership 1 was approved by FmHA to avert foreclosure due to delinquencies and shortages in project accounts or to Partnership 2'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 July 27, 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 Partnership 1's proposed acquisition of the Project.

No opinion is expressed or implied regarding whether Partnership 1'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 Partnership 1 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 Partnership 1 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 the Assistant Chief Counsel
(Passthroughs & Special Industries)