

## Private Letter Ruling 9009046, IRC Section 42

Reference(s): Code Sec. 42;

Ten-Year Holding Period Requirement 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: December 5, 1989

Dear \*\*\*

This is in response to your letter of September 25, 1989, and subsequent correspondence submitted on behalf of Partnership 1, in which you, as president of Corp T, which will be a general partner of Partnership 1, 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 acquisition of the Project under the authority of the exception provided in section 42(d)(6)(A)(i).

The following relevant representations have been submitted for consideration:

The Project consists of a one, two, and three bedroom apartment units housed in b buildings plus g service building located in City N, and was formerly placed in service by Partnership 2 on t1. Federal assistance for the Project was provided by the U.S. Department of Housing and Urban Development (HUD) under section 8 of the United States Housing Act of 1937.

Partnership 1 will be a Sate O in Commendam partnership with Corp T as the general partner. M is the president of Corp T. On t2, Corp T, on behalf of Partnership 1 signed a binding contract to acquire the a units in the Project from Partnership low-income rental housing. M is a general partner, through a trust interest in Partnership 2, which is a State O in Commendam partnership. At the time the Project is placed in service by Partnership 1, Corp T will own approximately e percent (but certainly less than f percent) of the partnership interests in Partnership 1 and the Limited Partners who are being syndicated will own the balance. Therefore, Partnership 1 and Partnership 2 will not be related persons as defined in section 42(d)(2)(D)(iii) of the Code. You have certified that the acquisition of the Project is to be by purchase as defined in section 179(d)(2).

The Project is subject to an outstanding mortgage in the present principal amount of \$d. The present mortgagor is Partnership 2 and P is the mortgagee. As part of the purchase price of \$c for the Project, Partnership 1 will assume the mortgage

indebtedness of \$d. You have certified that the acquisition of the a units in the Project is contingent upon receipt of the 10-year ownership requirement waiver and the allocation of housing credit dollar amount by the Agency.

Partnership 1 has been informed by letter dated t3 that the HUD 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.

You have made the following representations with respect to the Project:

(1) The a units in the Project were not previously place in service by Partnership 1, or by a person who was a related person (as defined in section 42(d)(2)(D)(iii)(11) of the Code) with respect to Partnership 1 at the time the Project was 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 1.42-2(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 of the Code for the Project.

In connection with the proposed claim for the credit, you represent 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 with 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 improvements of the building.

Section 42(d)(6)(A) of the Code provides as exception to 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 secure by property in the project (of which such building is a part) to the Department of Housing and Urban Development (HUD) or 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 buildings" 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 requirement 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 the representations and have determined that the buildings in 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 HUD to avert foreclosure due to delinquencies and shortages in project accounts or the noncompliance of Partnership 2 with the terms and conditions of the real estate mortgage, and that the requirements of section 1.42-2T of the temporary regulations have been satisfied.

Based on your letter dated September 25, 1989, and subsequent correspondence, we rule as follow:

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 the 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 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 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)

