

Private Letter Ruling 9009054, IRC Section 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.

Full Text:

Date: December 6, 1989

Dear ***

This is in response to your letters dated October 6, 1989, and November 3, 1989, submitted on behalf of Partnership, in which you as the original limited partner of Partnership and as President and majority stockholder of the general partner, Corp P, request a private letter ruling that will waive for Project the 10-year holding period required in section 42(d)(2)(B)(ii) of the Internal Revenue Code for federally-assisted low-income housing, under the authority of the exception provided in section 42(d)(6)(A)(i).

Project consists of a frame building housing (a) two bedroom apartment units and (b) single bedroom apartment unit on one tract of land located in City N. The units were last placed in service by M in tl, and federal assistance for the Project was provided through a loan under the authority of section 515 of the Housing Act of 1949. The outstanding balance of this loan is \$c with the Farmers' Home Administration (FmHA) as the mortgagee and M as the mortgagor.

On t2, Partnership entered into a binding contract to acquire the Project from the current owner, M, who is in default on the terms of its mortgage with FmHA. Partnership proposes to place the units in service as low-income rental housing. The total amount of consideration to be paid by Partnership for the Project is \$d, and includes; the rewriting of the prior outstanding liability of \$c, a consideration of \$e for the release of a second mortgage in the amount of g from bank O, and the provision of an additional loan from FmHA of \$f to make repairs and complete deferred maintenance. Partnership has represented that the acquisition of the Project is to be by purchase as defined in section 179(d)(2) of the Code.

Partnership has been informed that the Project is a "troubled project" by the National Office of FmHA and has attached the required documentation to the request for ruling.

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

(1) The buildings in the Project were not previously placed in service by 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 at the time the buildings were last placed in service;

(2) As of t3, the building was a "federally-assisted building" 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 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 apartments 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 claims 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 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 Farmers' 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.

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. Partnership has stipulated that it is in compliance with these requirements.

After examining the representations submitted, we have determined that the building in the Project is a federally-assisted building, within the meaning of section 42(d)(6)(B)(iii) of the Code, and that the Project's transfer to Partnership was approved by FmHA. 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 October 6, 1989, and November 3, 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 Partnership's proposed acquisition of the Project.

No opinion is expressed or implied regarding whether Partnership'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 who requested it. Section 6119(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 federal income tax returns for the Partnership and the respective partners 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 and Special Industries)