

Private Letter Ruling 9015030, IRC Section 42

TEN-YEAR HOLDING PERIOD REQUIREMENT WAIVED.

Full Text:

Date: January 11, 1990

Dear ***

This letter responds to your letter of December 14, 1989, and subsequent correspondence submitted on behalf of Partnership 1, in which you, as the 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 proposed acquisition of the Project under the authority of the exception provided in section 42(d)(6)(A)(i).

You submit the following relevant representations for consideration:

Partnership 1 is a State O limited partnership with L as the general partner. The Project consists of a apartment units housed in b buildings, located in City N and formerly placed in service by Partnership 2 on t1 and t2. 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 2, with M as its general partner, currently owns the Project, but Partnership 1 will acquire the Project. Therefore, on t3 and t4 Partnership 1 entered into a binding contract with Partnership 2 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 \$c, the sum of the approximate outstanding mortgage balance, \$d, and an additional amount, \$e. The present mortgagor is Partnership 2, and Bank is the mortgagee. Partnership 1 will assume that mortgage on closing. The additional \$e amount covers: 1) the costs of obtaining approval of the Transfer of Physical Assets from HUD, which will be primarily the cost of rehabilitation repairs to the Project estimated by HUD to be approximately \$f; and 2) any amount by which the Project's income is less than g percent of the potential income for 6 months after closing as a result of occupancy being less than such percentage at closing. Partnership 1 has certified that the acquisition is to be by purchase as defined in section 179(d)(2) of the Code.

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 Partnership 1, 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 t4, the b buildings were "federally-assisted buildings" as defined in section 1.42-2T(c)(1) of the Temporary Income Tax Regulations.

(3) As of t4, 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, 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 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 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. You have stipulated that Partnership 1 is in compliance with these requirements.

We have examined your representations and have determined that the b 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 HUD 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 mortgage, and that the requirements of section 1.42-2T of the temporary regulations have been satisfied.

Based on your letter dated December 14, 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 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 the income tax return of 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 & Special Industries)