

Private Letter Ruling 9016085, IRC Section 42

Date: January 26, 1990

Dear ***

This letter responds to your letter of December 22, 1989, and subsequent correspondence submitted on behalf of Partnership 1, in which you, as general partner of Partnership 3, the sole partner of Partnership 1, ask for a private letter ruling that will waive the 10-year holding period requirement for existing buildings 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).

You submit the following representations for consideration:

The Project consists of a buildings, located in the City and was formerly placed in service by Partnership 2 between t1 through 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.

On t3, Partnership 1 signed a binding contract with Partnership 2 for the Project, which was acquired on t4. The total amount of consideration paid or to be paid by Partnership 1 for the Project is \$b, which includes the approximate outstanding mortgage balance of \$c. The present mortgagor is Partnership 2, and bank is the mortgagee. Partnership 1 will assume that mortgage on closing. Partnership 1 has certified that the acquisition is to be by purchase as defined in section 179(d)(2) of the Code.

Partnership 1 has been informed that the Project is a "troubled project" by the National Office of HUD Multiple Family 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 buildings in the Project were not previously placed in service by Partnership 1, or by a person who was 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 a 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 buildings since they were last placed in service.

(5) No prior owner of the a buildings 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) 96(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 a building 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 the Project 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 22, 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 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)