

Private Letter Ruling 9038008, IRC Section 42

Date: June 14, 1990

Dear ***

This letter responds to your letter of March 13, 1990, and subsequent correspondence submitted on behalf of Partnership 1, in which you ask for a private letter ruling that will waive the 10-year holding period requirement 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 have submitted the following relevant representations for consideration:

Partnership 1, a State O limited partnership, was formed under the State O Revised Uniform Limited Partnership Act by the execution of an Agreement of Limited Partnership on t5 and the filing of a Certificate of Limited Partnership on t6. Partnership 1 was formed for the purpose of acquiring a beneficial interest in certain improved real estate consisting of apartment buildings (the Project) in City N. Partnership 1 will file its U.S. partnership return of income with the Internal Revenue Service Center at City U and is under the audit jurisdiction of the City N District Office. The sole general partner of Partnership 1, Corp P (with M as its president), has a j percent interest in the partnership, while the sole initial limited partner is Corp S with a k percent interest.

Partnership 1 will acquire the buildings in the Project from Partnership 2, the current beneficial owner and mortgagor: The Project consists of b buildings containing a dwelling units. The Project buildings are masonry structures that are approximately h years old. The units range in size from one to five bedrooms.

Legal title to the Project buildings is held by the Trust, a State O land trust, the entire beneficial ownership of which is currently held by Partnership 2, a State O limited partnership formed on or about t7. Partnership 2 purchased the Project buildings from the United States Department of Housing and Urban Development (HUD) for \$c on or about t1 and placed them in service on that date.

Corp Q was the original general partner and a limited partner, and Corp T was a limited partner of Partnership 2. In or about t2 Partnership 2 raised capital through a private offering of limited partnership interests, and upon the admission of the investors as limited partners, Corp Q and Corp T withdrew as limited partners. Presently, the general partners of Partnership 2 are Corp Q and L, each with a d percent interest, and the limited partners are K, with an 1 percent interest and Partnership 3 with an m percent interest.

The limited partners of Partnership 2 acquired their limited partnership interests in exchange for commitments to make capital contributions of approximately \$e. Partnership 2 used the \$e together with proceeds of a construction loan from Corp R in

the amount of \$f and advances from Corp Q to rehabilitate the project. The rehabilitated b buildings were placed in service on t3.

The Agency provided permanent financing upon the completion of the rehabilitation of the Project. This financing is secured by a mortgage on the b buildings in the Project, and this mortgage is insured by HUD under section 221(d)(4) of the National Housing Act of 1937, as amended, and the regulations thereunder. As of t4 the outstanding principal balance of the permanent loan was approximately \$g.

Each building in the Project receives Housing Assistance Payments under the HUD Section 8 Program. Pursuant to separate Housing Assistance Payments Contracts with HUD, the present owners of the buildings lease dwelling units to eligible "Lower Income Families" for use solely as private dwellings for stipulated rents and receive rent subsidies from HUD. As of t4 over k percent of the apartments in the Project receive rental subsidies pursuant to the section 8 of the United States Housing Act of 1937.

Presently, the Project is in a state of disrepair and is in great need of additional rehabilitation. Consequently, Partnership 2 has been working with HUD to develop a plan for rehabilitating the Project. However, the planned rehabilitation will require a substantial infusion of capital and none of the current owners has the financial resources to complete the rehabilitation. Consequently, on t8 Partnership 2 agreed to sell the Project to Partnership 1 for a total price of \$i, which includes the approximate outstanding mortgage balance, \$g. The Present mortgagee is the Agency and Partnership 2 is the mortgagor. Partnership 1 will assume the mortgage indebtedness of Partnership 2 on closing, which is scheduled for t9.

Relative to the Project, Partnership 1 certifies and/or represents that:

1. the acquisition of the Project will be by purchase as defined in section 179(d)(2) of the Code.
2. 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;
3. as of t8, the b buildings were "federally-assisted-buildings" as defined in section 1.42-2T(c)(1) of the Temporary Income Tax Regulations;
4. as of t8, 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;
5. there have been no nonqualified substantial improvements to the a units since they were last improved and placed in service; and
6. 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 in 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, or

(ii) to avert a claim against a federal mortgage insurance fund (of such Department or 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 proposed 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 March 13, 1990, 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 option 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.

Sincerely yours,

James F. Ranson

Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs & Special Industries)