

Private Letter Ruling 9046011, IRC Section 42

Date: August 15, 1990

Dear ***

This is in response to your letters dated July 19, 1990, and August 7, 1990, submitted on behalf of Partnership, in which you request a private letter ruling that will waive for the Project the 10-year holding period requirement in section 42(d)(2)(B)(ii) of the Internal Revenue Code under the authority of the exception for certain federally-assisted buildings provided in section 42(d)(6)(A)(i).

Partnership is a State C limited partnership organized on t7 and is currently qualified to do business in State D. The general partner, E, has a g percent partnership interest and the limited partner, F, has the remaining h percent interest.

The Project consists of b residential apartment buildings located on contiguous parcels of land in City A, County B, of State C. The buildings consist of d one bedroom apartment units and d two bedroom apartment units. One bedroom apartments have approximately i square feet floor area and generally house elderly tenants. The two bedroom units have approximately j square feet area and generally house single or divorced women with children. Construction of the apartments began in t6 and a housing assistance contract was entered into on t1. The buildings were last placed in service with the housing contract, on t1, 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 as of t2 is \$c (including accrued interest) with the Farmers' Home Administration (FmHA) as the mortgagee and Corp M as the mortgagor.

Partnership states that the buildings are currently in a state of disrepair and deterioration. Currently, e units are not rented due to deterioration and Partnership believes it will continue to deteriorate unless a new owner is found.

On t3, Partnership entered into a binding contract to acquire the Project from the current owner, Corp M, who is in default on the terms of its mortgage with FmHA. Closing is scheduled for t5, at which time Partnership will acquire the Property. 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 \$c, which includes the prior outstanding mortgage balance. Partnership proposes to rehabilitate the Project at an estimated cost of approximately \$f. New gas furnaces, air conditioning units, hot water tanks, insulation, new storm doors, new carpeting, and new roofing are all proposed. 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 t4, the buildings were a "federally-assisted buildings" as defined in section 1.42-2(c)(1) of the Income Tax Regulations.

(3) As of t4, federal mortgage funds with respect to the Project were at risk within the meaning of section 1.42-2(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)(E) 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, as such Acts are in effect on the date of enactment of the Tax Reform Act of 1986.

Section 1.42-2 of the 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 buildings in the Project are federally-assisted buildings, within the meaning of section 42(d)(6)(E) of the Code, and that the Project's transfer to Partnership was approved by FmHA. In addition, the requirements of section 1.42-2 of the regulations have been satisfied.

Based on the above representations as submitted in your letters dated July 19, 1990, and August 7, 1990, 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 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 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)