

Private Letter Ruling 9102019, IRC Section 42

Date: October 12, 1990

Dear ***

This letter responds to your letter of June 21, 1990, and subsequent correspondence submitted on behalf of the Partnership, in which you, as the general partner of the Partnership, 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 proposed acquisition of the Project under the authority of the exception provided for certain federally-assisted buildings in section 42(d)(6)(A)(i).

You submit the following relevant representations for consideration:

The Partnership is a State O limited partnership with M as the general partners. The Project consists of b apartment units housed in c buildings, which includes one common usage building, located in City N and formerly placed in service by Corp P on t1. There have not been any improvements to the buildings since that time. Federal assistance for the Project was provided by the Farmer's Home Administration (FmHA) under section 515 of the Housing Act of 1949.

Corp P currently owns the Project, but the Partnership will acquire the Project. Therefore, on t2 the Partnership entered into a binding contract with Corp P to acquire the b units in the Project by assuming the mortgage indebtedness of Corp P. The Partnership proposes to place the units in service as low-income rental housing. The amount of consideration to be paid by the Partnership for the Project is \$d, which includes the approximate outstanding mortgage balance, \$e. The present mortgagor is Corp P and FmHA is the mortgagee. The Partnership will assume that mortgage on closing.

Relative to the Project, the Partnership 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 b units in the Project were not previously placed in service by the 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 the Partnership at the time the buildings were last placed in service;
3. as of t2, the c buildings were "federally-assisted buildings" as defined in section 1.42-2(c)(1) of the Income Tax Regulations;
4. as of t2, federal mortgage funds with respect to the Project were at risk within the meaning of section 1.42-2(c)(2) of the regulations;

5. there have been no nonqualified substantial improvements to the b units since they were last improved and placed in service; and

6. no prior owner of the b 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 the 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 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 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) of the Code defines the term "federally-assisted building" as including any building that is substantially assisted, financed, or operated under (i) section 8 of the United States Housing Act of 1937, (ii) section 221(d)(3) or 236 of the National Housing Act of 1934, or (iii) section 515 of the Housing Act of 1949.

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. You have stipulated that the Partnership is in compliance with these requirements.

We have examined your representations and have determined that the c 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 the Partnership was approved by

FmHA to avert foreclosure due to delinquencies and shortages in project accounts or to Corp P's noncompliance with the terms and conditions of the real estate mortgage, and that the requirements of section 1.42-2 of the regulations have been satisfied.

Based on your letter dated June 21, 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 the Partnership's proposed acquisition of the Project.

No opinion is expressed or implied regarding whether the 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 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 the Partnership for the taxable year in which the transaction covered by this ruling is consummated.

We are sending a copy of this letter to FmHA in accordance with that agency's request.

Sincerely yours,

James F. Ranson

Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs & Special Industries)