

## Private Letter Ruling 9110011, IRC Section 42

Date: November 29, 1990

Dear \*\*\*

This letter responds to your letter of July 2, 1990, and subsequent correspondence submitted on behalf of the Partnership requesting a private letter ruling that will waive the 10-year holding period requirement for low-income housing projects of section 42(d)(2)(B)(ii) of the Internal Revenue Code under the exception provided in section 42(d)(6)(D).

Partnership has submitted following representations.

The Project consists of b apartment units housed in c buildings, located in City N. Bank acquired the Project through foreclosure proceedings on t1. Agency 1 was appointed conservator of Bank on t2. Agency 1 in its capacity of liquidating receiver for Bank, retained all Bank's Assets.

On t3, Corp P, the general partner of the Partnership, represented by its principals, L and M, signed an Agreement of Sale for acquisition and on t4 purchased the Project from the Agency 1, as conservator for Bank. Partnership acquired the Project for the purpose of providing affordable housing to qualified, low-income households and has applied to Agency 2 for a t5 allocation of the low-income housing tax credit under section 42 of the Code. This application requests the 30 percent present value tax credit on the eligible basis of the acquisition costs, and the 70 percent present value tax credit on new rehabilitation costs.

The Partnership has made the following additional representations and certifications with respect to the Project:

1. The acquisition is by purchase (as defined in section 179(d)(2) of the Code, as applicable under section 42(d)(2)(D)(iii)(I)).
2. The Project was 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 as of the time the Project was last placed in service.
3. Partnership has obtained a letter from Agency 1 dated t6 stating that it was appointed conservator of Bank on t2
4. To the best of the knowledge of the Partnership and the Partnership's representatives, there have been no nonqualified substantial improvements to the Project since it was last placed in service.
5. To the best of the knowledge of the Partnership and the Partnership's representatives, no prior owner was allowed a low- income housing tax credit under section 42 of the Code for the Project.
6. For purposes of section 42(d)(2)(B)(iv) of the Code, a low- income housing credit is allowable to the Project under section 42(a) by reason of section 42(e).

7. The date of purchase of the property was subsequent to the date of enactment of the Revenue Reconciliation Act of 1989, (December 19, 1989) and therefore, the purchase complies with the effective date of section 42(d)(6)(D) of the Code.

8. This application for the waiver is being timely filed within 12 months after the acquisition of the property.

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. 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 buildings are last placed in service or the date of the most recent nonqualified substantial improvement of the building.

Section 42(d)(6)(D) 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 building if the Secretary (after consultation with the appropriate federal official) determines that the building is being acquired from an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act) or from a receiver or conservator of such an institution.

Based upon the Partnership's representations, and the letter dated t6 from Agency 1 that Partnership has acquired the Project from a conservator of an insured depository institution in default under section 42(d)(6)(D) of the Code, we rule that the 10-year holding period requirement under section 42(d)(2)(B)(ii) of the Code is waived with respect to the Partnership's 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.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling may be modified or revoked if the adopted temporary or final regulations are inconsistent with any conclusion in the ruling. See section 17.07 of Rev. Proc. 1990-1 I.R.B. 8. However, when the criteria in section 8.05 of Rev. Proc. 90-1 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

Sincerely yours,

Susan Reaman

Assistant to the Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs & Special Industries)