

Private Letter Ruling 9110017, IRC Section 42

Date: December 3, 1990

Dear ***

This letter responds to your letter of September 17, 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 made the 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.

On t3, Corp P, the general partner of the Partnership, represented by its president, M, signed a binding contract for acquisition and on t5 expects to acquire the Project from the Bank for \$d. Partnership will acquire the Project for the purpose of providing affordable housing to qualified, low-income households and has applied to Agency 2 for a t6 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 estimates that rehabilitation costs will average \$e per apartment unit in each building complying with the minimum rehabilitation expenditures of section 42(d)(2)(B)(iv) of the Code.

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 t4 stating that it was appointed conservator of Bank on t2 and continues to serve as conservator of Bank at the present time.
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. All terms and conditions of section 42 of the Code and related sections of the Code, including for purposes under section 42(d)(2)(B)(iv), a low-income housing credit is allowable to the Project under section 42(a) by reason of section 42(e) will be met, except for the 10-year holding requirement provided by 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)(D).

7. The date of purchase of the property was after 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 as 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 Act) or from a receiver or conservator of such an institution.

Based upon the Partnership's representations, and the letter dated t4 from Agency 1 that Partnership will acquire 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)