

Private Letter Ruling 9115010, IRC Section 42

Date: January 9, 1991

Dear ***

This letter responds to the letter dated October 19, 1990, and subsequent correspondence submitted by your authorized representative on behalf of the Partnership, requesting 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 provided in section 42(d)(6)(A)(ii). The facts as represented are substantially set forth below.

The Partnership was formed for the purpose of purchasing, acquiring, owning, developing, improving and operating as an investment and a business, certain residential real estate located in City A, State B, known as the Project. Corp M and Corp N each own a b percent general partnership interest and C is serving as the original limited partner for the remaining ownership interest.

The Project is currently owned by Corp O, a State B corporation, which purchased the Project from individual, P, on t1. This Project was last placed in service on that date (t1) by Corp O. Pursuant to a binding contract of purchase, executed on t2, ownership of the Project will be transferred from Corp O to the Partnership. This transfer is expected to occur no later than t3. It is contemplated that the acquisition will be funded with the proceeds of certain tax- exempt bonds issued as of t5 by Corp L. Thereafter, the limited partnership interests in the Partnership will be syndicated.

The Project consists of c buildings having the same address and housing d residential apartment units. The total consideration to be paid by Partnership at settlement (including the assumption of the mortgage) is \$e.

The Partnership further represents that due to a number of factors, the Project has been unable to generate sufficient revenues, after payment of operating expenses, to pay the required debt service on a mortgage loan (Mortgage Loan) insured by the U.S. Department of Housing and Urban Development (HUD). The Mortgage Loan has been in default since t4. The Partnership's acquisition of the Project, and the syndication of the limited partnership interests will bring a much needed infusion of funds into the Project. These funds will enable the Partnership to make significant improvements in the physical condition of the Project while maintaining low rent levels. As a consequence, the occupancy rate and income stream at the Project will increase. In addition, HUD's expected approval of a proposed mortgage modification, in conjunction with the tax-exempt financing, will result in a decrease in the interest rate on the Mortgage Loan and a corresponding decrease in debt service. This will produce a positive cash flow from the Project, permit the Partnership to cure all defaults on the Mortgage Loan, and eliminate the present risk of a claim on the federal insurance fund.

The Mortgage Loan on the Project is coinsured by HUD under the National Housing Act. The Company acted as coinsurer and as lender on the Mortgage Loan until t6 when the Company's HUD coinsured mortgage loan portfolio was transferred to the Government National Mortgage Association (GNMA), as guarantor of the GNMA Mortgage-Backed Securities financing the Mortgage Loan. As of t7 the amount that was outstanding on the Mortgage Loan (including arrearages) was \$f. It is estimated that the amount outstanding on the mortgage loan at the time of acquisition will be substantially similar to this amount. Partnership will assume the Mortgage Loan upon its acquisition of the Project.

In a letter dated t8, the Partnership has been informed that the Project is a "troubled project" by the National Office of HUD and has attached the letter to this request for ruling.

The Partnership certifies that the Project is substantially assisted under section 8 of the United States Housing Act of 1937, and therefore consists of federally-assisted buildings under sections 42(d)(6)(B)(i) and 1.42-2(c)(1) of the Income Tax Regulations. Specifically, as of t9, g out of d total units of the Project were occupied by section 8 certificate or voucher holders and the Partnership has attached to this ruling request the required documentation.

You have made the following representations and certifications with respect to the Project:

- (1) The acquisition of the Project will be by purchase (as defined under section 179(d)(2) of the Code as applicable under section 42(d)(2)(D)(iii)(I));
- (2) The buildings 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 t8, the buildings were "federally-assisted buildings" as defined in sections 42(d)(6)(B)(i) of the Code and 1.42- 2(c)(1) of the Regulations;
- (4) As of t8, federal mortgage funds with respect to the Project were at risk within the meaning of section 1.42-2(c)(2);
- (5) There have been no nonqualified substantial improvements to the subject apartments units since they were last placed in service;
- (6) No prior owner of the Project was allowed a low-income housing credit under section 42 of the Code; and
- (7) For purposes of section 42(d)(2)(B)(iv) of the Code, a low- income housing credit is allowable under section 42(a) by reason of section 42(e) with respect to each building in the Project.

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 the Partnership asks that this requirement be waived under the authority granted the Secretary of the Treasury by section 42(d)(6)(A)(ii).

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

Section 42(d)(6)(A)(ii) 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 to avert a claim against a federal mortgage insurance fund (of the Department of Housing and Urban Development or the Farmers' Home Administration).

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 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. The Partnership has represented that it is in compliance with these requirements.

Based upon the facts and representations submitted above, the buildings in the Project are federally-assisted buildings within the meaning of section 42(d)(6)(B)(i) of the Code and federal funds are at risk under section 42(d)(6)(A)(ii). In addition, the requirements of section 1.42-2 of the regulations have been satisfied.

Therefore, 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 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 HUD in accordance with that agency's request.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent your authorized representative.

Sincerely yours,

Susan Reaman

Assistant to the Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)