

Private Letter Ruling 9119019, IRC Section 42

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UIL No. 0042.00-00

Headnote:

Reference(s): Code Sec. 42;

#### IRS WAIVES HOLDING PERIOD FOR LOW-INCOME HOUSING CREDIT.

A partnership acquired from a corporation a housing project that had received federal assistance provided by the Farmers' Home Administration (FmHA) through a rural rental housing loan under section 515 of the Housing Act of 1949. The project has had a history of financial problems resulting in the corporation's default on the section 515 loan. The partnership acquired the project by warranty deed. The initial consideration paid was the assumption of a section 515 mortgage with the FmHA as the mortgagee. Because less than 10 years has elapsed since the project was first placed in service, the partnership submitted a request for a waiver of the holding period requirement of section 42(d)(2)(B)(ii). The FmHA has informed the partnership that the project is a "troubled project."

The Service has waived the 10-year holding period requirement. The Service noted that section 42(d)(6)(B)(iii) defines "federally assisted building" to include any building that is substantially assisted or financed under section 515 of the 1949 Housing Act.

Electronic Citation: 91 TNT 105-67

Geographic Identifier: United States

Index Term: low-income housing, credit

Full Text:

Date: February 6, 1991

CC:P&SI:5 - TR-31-24-91

Dear \*\*\*

This letter responds to your letter of June 13, 1990, and subsequent correspondence submitted on behalf of Partnership, asking for a private letter ruling that will waive the 10-year holding period requirement for federally-assisted low-income housing projects of section 42(d)(2)(B)(ii) of the Internal Revenue Code under the authority of the exception

provided in section 42(d)(6)(A)(i). The facts as represented are substantially set forth below.

The Project consists of b apartment units and an office-laundry- maintenance structure housed in c buildings on a d acre parcel of land in City N. The prior owner (Corp A) placed the Project in service on t1. Federal assistance for the Project was provided by the Farmers' Home Administration (FmHA) through a rural rental housing loan under section 515 of the Housing Act of 1949.

You represent that the Project has had a history of financial problems resulting in the prior owner (Corp A) going into default on the section 515 loan.

Partnership, of which L is the general partner, acquired the Project by Warranty Deed on t1 and plans at a future date to syndicate the Partnership. The initial consideration paid by Partnership for the Project was the assumption of a section 515 mortgage of \$e with FmHA as the mortgagee.

Since the interval between t1 and t1 is less than 10 years and federal funds are at risk, Partnership has submitted this request for a waiver of the 10-year holding period requirement of section 42(d)(2)(B)(ii).

In a letter from the National Office of the FmHA Multiple Family Housing Servicing and Property Management Division, dated t3, the Partnership has been informed that the Project, as a result of a history of financial distress and mortgage default, is a "troubled project." Such certification has also been furnished to the Internal Revenue Service.

Partnership has made the following representations and certifications with respect to the Project.

(1) The acquisition of the Project is 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 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;

(3) As of t2, the buildings were "federally-assisted buildings" as defined in sections 42(d)(6)(B)(iii) of the Code and 1.42- 2(c)(1) of the Income Tax Regulations;

(4) As of the time of this application for waiver, 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 buildings 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 for the buildings; and

(7) The apartment units in the buildings are to be rehabilitated in a manner that satisfies the requirements of sections 42(d)(2)(B)(iv) and 42(e) of the Code.

In connection with the proposed claim for the credit, Partnership represents that all terms and conditions of section 42 and related sections of the Code will be met except for the 10-year holding period requirements of section 42(d)(2)(B)(ii), and 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)(i) 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 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.

Section 42(d)(6)(B)(iii) of the Code defines the term "federally-assisted building" as including any building that is substantially assisted or financed under section 515 of the Housing Act of 1949, as such Act was in effect on the date of enactment of the Tax Reform Act of 1986 (October 22, 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. You have stipulated that Partnership is in compliance with these requirements.

Based on the above facts and representations as submitted 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 proposed acquisition of the Project.

No opinion is expressed or implied regarding whether the costs to the Partnership of the acquisition and the 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 income tax return of Partnership 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,

Richard Keys

Senior Technical Reviewer, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)