

Private Letter Ruling 9119024, IRC Section 42

10-year holding period requirement waived.

Full Text:

Date: February 7, 1991

Dear ***

This letter responds to your letter of November 19, 1990, and subsequent correspondence submitted on behalf of Partnership 1, requesting 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 housed in c buildings. One building houses four apartment units and the office and laundry area. A second building houses eight apartment units. The remaining buildings each house four apartment units. The Project is located in City N and was formerly placed in service by Partnership 2 on t1. Federal assistance for the Project was provided by the Farmers' Home Administration (FmHA) under section 515 of the Housing Act of 1949.

You represent that the Project has had a history of financial problems and lawsuits apparently stemming from Partnership 2's inability to syndicate. This caused a severe financial drain on the Project.

Partnership 1, of which L is the general partner, acquired the Project by Warranty Deed on t2. The consideration paid by Partnership 1 for the Project was the assumption of the outstanding mortgage balance of \$d. The prior mortgagor was Partnership 2, and FmHA is the mortgagee.

Since the interval between t1 and t2 is less than 10 years and federal funds are at risk, Partnership 1 has submitted this request for a waiver of the 10 year holding period requirement of section 42(d)(2)(B)(ii).

In a letter dated t3, Partnership 1 has been informed that the Project is a "troubled project" by the National Office of the FmHA Multiple Family Housing Servicing and Property Management Division, and has attached the letter to this ruling request.

Partnership 1 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 1, 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 1 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 b units since they were last placed in service;

(6) No prior owner of the b units 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.

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)(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) 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 of 1934, 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 (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 represented that Partnership 1 is in compliance with these requirements.

Based on the above facts and Partnership 1's representations we have determined that the buildings in the Project are federally- assisted buildings within the meaning of section 42(d)(6)(B)(iii) of the Code, and that federal funds are at risk under section 42(d)(6)(A)(i). In addition, the requirements of section 1.42-2 of the regulations have been satisfied.

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 Partnership 1's proposed acquisition of the Project.

No opinion is expressed or implied regarding whether Partnership 1'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 Partnership 1 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,

Susan Reaman

Assistant to the Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs & Special Industries)