

Private Letter Ruling 9131009, IRC Section 42

10-year Holding Requirement Waived for Housing Project

Date: April 24, 1991

Dear ***

This letter responds to your letter of February 15, 1991, and subsequent correspondence submitted on behalf of Partnership 1 by its authorized representatives, requesting a private letter ruling that will waive the 10-year holding period requirement 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) for certain federally-assisted buildings. The facts as represented are substantially set forth below.

Partnership 1 is a State O limited partnership formed in t5. Partnership 1 has i general partners, L and M, and it is anticipated that Partnership 1 will have j limited partners. Partnership 1 and the general partners are under the jurisdiction of the State O District Director.

The Project consists of b apartment units housed in c buildings plus an office/laundry building, located in City N and was formerly placed in service by Partnership 2, a State P limited partnership, on t1. Federal assistance (a loan) for the Project was provided by the Farmers' Home Administration (FmHA) under section 515 of the Housing Act of 1989. This loan in the approximate amount of \$d is currently in default. FmHA has paid the delinquent property taxes on the Project. FmHA had scheduled foreclosure on the Project for t6, but has held it in abeyance.

On t2, Partnership entered into a purchase and sale agreement with Partnership 2 to acquire the Project. The expected closing date for acquisition of the Project was t3. Total consideration to be paid by Partnership 1 to Partnership 2, the present mortgagor, will be approximately \$e with a cash payment of \$g at closing. FmHA will provide a new loan of approximately \$f in place of Partnership 1 assuming the outstanding FmHA loan in the approximate amount of \$d. In addition, Partnership 1 intends to apply for a rehabilitation loan of approximately \$h.

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) of the Code.

In a letter dated t4, the internal Revenue Service 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.

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 has a related person (as defined in section 42(d)(2)(D)(iii)(11) of the Code with respect to Partnership 1 at the time the buildings Here last placed in service;
- (3) As of t2, the buildings were "federally-assisted buildings" as defined in section 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 upon 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 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. Consequently, 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 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.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely yours,
James F. Ranson
Chief, Branch 5
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)