

Private Letter Ruling 9135037, IRC Section 42

10-YEAR HOLDING PERIOD WAIVED.

Full Text:

Date: May 31, 1991

Dear ***

This letter responds to your request for ruling dated March 25, 1991, as amended by your Addendum dated April 8, 1991, submitted on behalf of Partnership, requesting for the Project a waiver of 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.

Partnership is a limited partnership, of which L is the general partner. The Project consists of a b unit apartment complex housed in c buildings located in City M. d of the buildings are four-plex apartment units and there is one common usage building containing an office, laundry, and maintenance/storage area. The Project was originally placed in service by Seller on t1 and has had no substantial improvements since that time.

You represent that the Project was financed by a loan from the Farmers' Home Administration (FmHA) under section 515 of the Housing Act of 1949, has had a history of financial problems, and is currently in default. In order to avert foreclosure the prior owner, Seller, has entered into an agreement with Partnership for the sale of the Project through an assumption by Partnership of the outstanding mortgage. Partnership acquired the Project from Seller by a binding contract on t3. The consideration paid by Partnership was the assumption of the outstanding mortgage balance of \$e. The prior mortgagor was Seller and FmHA is the mortgagee.

Because there was not a period of at least 10 years between the Project's acquisition by Partnership and the date it was originally placed in service, the Project does not comply with the 10-year holding period requirement under section 42(d)(2)(B)(ii) of the Code. Therefore, Partnership has contacted the FmHA National Office and requested that they designate the Project as being in a "troubled" status in order that it may qualify for the low-income housing tax credit under the exception provided by section 42(d)(6)(A)(i). A copy of a letter from the National Office of FmHA, dated t2, concurring in the "troubled" status designation is attached to the request for ruling.

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 buildings 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 is in compliance with these requirements.

Based on the above facts and Partnership'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 the 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's acquisition of the Project.

No opinion is expressed or implied regarding whether 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 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,

James F. Ranson

Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)