Private Letter Ruling 9243022, IRC Section 42

Reference(s): Code Sec. 42;

Date: July 23, 1992

Dear ***

This is in response to your letter of April 20, 1992, written on behalf of Partnership, requesting a waiver of the 10-year holding period requirement of section 42(d)(2)(B)(ii) of the Internal Revenue Code under the exception in section 42(d)(6) for certain federally- assisted buildings acquired during the 10-year period.

Partnership has represented the following facts. On a, Corporation, on behalf of an entity to be formed, entered into an agreement to purchase the Project (the "Purchase Agreement"). Later, Partnership was formed with Corporation as its general partner to acquire and substantially rehabilitate and revitalize the Project. The Purchase agreement is contingent upon a waiver of the 10-year holding period requirement pursuant to the exception in section 42(d)(6) of the Code.

The Project, located in City A, consists of e apartment buildings, a community building, and a swimming pool. The buildings contain a total of f units, all of which are low-income units.

Partnership intends to purchase and acquire the Project on or about d from Seller, a State N limited partnership. Seller financed the Project with a HUD-insured FmHA section 236 mortgage and placed the Project in service in g. On d, Seller estimates that the outstanding principal balance of the mortgage note will be approximately $y. Partnership intends to assume the underlying mortgage and pay Seller $x cash at closing. The purchase price of the Project is $h.

Partnership intends to accomplish the contemplated purchase and rehabilitation of the Project by assuming the underlying mortgage, taking out an FmHA section 241 loan of $i, and using the low-income housing tax credit. On b, Partnership submitted an application for allocation of a housing credit dollar amount to the Authority. Acceptance of Partnership's tax credit application is contingent upon the waiver of the 10-year holding period.

Because there will not be a period of at least 10 years between Partnership's acquisition of the Project and the date it was last placed in service, the Project will not comply with the 10-year holding period requirement of section 42(d)(2)(B)(ii) of the Code. In a letter dated c, the National Office of the Assistant Secretary for Housing-Federal Housing Commissioner of HUD informed Partnership that the Project has been designated a "troubled project."

Partnership has also represented or certified that:

(1) the acquisition of the Project will be by purchase from an unrelated person within the meaning of section 42(d)(2)(D)(iii)(I) of the Code;

(2) there has been no substantial improvement to the buildings in the Project as defined in section 42(d)(2)(D)(i) of the Code;

(3) 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 as of the time the buildings were last placed in service;

(4) no prior owner of the buildings in the Project was allowed a low-income housing credit under section 42 of the Code for the buildings in the Project; and

(5) the residential units of the Project will be rehabilitated in accordance with 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. The eligible basis is a factor used in computing the amount of credit allowable. 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). Upon 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' Horne 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 the Acts are were in effect on October 22, 1986.

Section 1.42-2 of the regulations contains the specific 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 complies with those requirements, and have provided documents that sufficiently substantiate your representations.

Based upon the facts, representations, and documents submitted, 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 facts, representations, and documents submitted, we rule that the 10-year holding 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 then taxpayer who requested it. Section 6110(j) 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.

Sincerely yours,

James Ranson

Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)

ch qualified low- income building.

Section 42(c)(2) defines the term "qualified low-income building" as any building: (A) which is part of a qualified low- income housing project at all times during the period (i) beginning on the first day in the compliance period on which such building is part of such a project, and (ii) ending on the last day of the compliance period with respect to such building, and (B) to which the amendments made by section 201(a) of the Tax Reform Act of 1986 apply.

Section 42(g)(1) defines the term "qualified low-income housing project" as any project for residential rental property if the project meets the requirements of subparagraphs (A) or (B), whichever the taxpayer elects. The election is irrevocable. The project meets the requirements of section 42(g)(1)(A) if 20 percent or more of the residential units in the project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income. The project meets the requirements of section 42(g)(1)(B) if 40 percent or more of the residential units in the project are both rent-

restricted and occupied by individuals whose income is 60 percent or less of area median gross income.

Section 42(g)(2)(A) provides that, for purposes of section 42(g)(1), a unit is rent-restricted if the gross rent (defined in section 42(g)(2)(B)) that is paid for the unit does not exceed 30 percent of the imputed income limitation applicable to the unit. Section 42(g)(2)(C) defines the imputed income limitation applicable to the unit as the income limitation that would apply to the unit under section 42(g)(1) to individuals occupying the unit if the number of individuals occupying the unit were (1) in the case of a unit that does not have a separate bedroom, 1 individual, and (2) in the case of a unit that has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom.

Section 42(i)(3) defines a low-income unit as any unit in a building that is (1) rent-restricted under section 42(g)(2), and (2) occupied by individuals that meet the income limitation applicable under section 42(g)(1) to the project of which the building is a part.

The ruling requested by Taxpayer concerns whether these reconverted SRO units qualify as low-income units under section 42(i)(3). Assuming that these units are, in fact, SRO units, these units qualify as low-income units because they meet the requirements of section 42(i)(3).

The Project SRO units will be rent-restricted. The imputed income limitation applicable to any SRO unit is the income limitation that would apply under section 42(g)(1) to individuals occupying the unit if the number of individuals occupying the unit is 1. Projects SRO units will be occupied exclusively by one individual and the rent charged to each SRO unit occupant will not exceed the amount permitted under section 42(g)(2)(C)(i).

All of the units in the Project will be occupied by individuals whose incomes do not exceed 60 percent of area median gross income. Thus, Project SRO units meet the income limitation applicable under section 42(g)(1).

The initial lease term in the Project will be for a period of not less than 6 months. Thus, the units will be used on other than a transient basis.

Finally, the Project will meet HUD Section 8 housing quality standards. In the absence of regulations under section 42(i)(3)(B)(ii), these standards satisfy the suitability for occupancy requirements of section 42(i)(3)(B)(i).

Therefore, based upon the above facts and representations, we conclude that, the space rented pursuant to each lease of a SRO unit is a separate "low-income unit" within the meaning of section 42(i)(3).

No opinion is expressed or implied regarding the application of any other provisions of the Code or regulations. This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent. Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling may be modified or revoked if the adopted temporary or final regulations are inconsistent with any conclusion of this ruling. See section 11.04 of Rev. Proc. 94-1, 1994-1 I.R.B. 10, 39. However, when the criteria in section 11.05 of Rev. Proc. 94- 1 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

A copy of this letter should be attached to the appropriate federal income tax return for the taxable year in which the transaction covered by this ruling is consummated. In accordance with the power of attorney on file, this letter is being sent to you as the authorized representative of Taxpayer.

Sincerely yours,

JAMES RANSON

Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)