

Private Letter Ruling 9247023, IRC Section 42

Dear ***

This letter responds to your letter of July 2, 1992, submitted on behalf of the Partnership requesting a private letter ruling that will waive, for the Project, the 10-year holding period requirement for existing buildings of section 42(d)(2)(B)(ii) of the Internal Revenue Code under the exception provided by section 42(d)(6)(D).

The Partnership has made the following representations.

The Partnership was formed as a limited partnership under State X law, and filed a certificate of limited partnership with the Secretary of State of State X on t1. The Partnership is under the audit jurisdiction of the District Director in City X.

The Partnership was formed for the purpose of acquiring, rehabilitating, and operating the Project, a low-income housing project, which contains a units in b buildings. The Project was last placed in service on t2.

The Partnership has two general partners. The Partnership's managing general partner is GP1, a State X Corporation that is wholly owned by Corp M, a State Y corporation. The other general partner is GP2, a State X non-profit corporation. The Partnership's initial limited partner is LP1. It is anticipated that LP1 will withdraw from the Partnership on or about t3, and at that time, LP2 will be admitted to the Partnership as the sole limited partner.

The Agency, as receiver for Savings and Loan, an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act, acquired the Project through foreclosure on a mortgage to Savings and Loan from the former owners, Corp N on t2, the date the Project was last placed in service.

The Office appointed the Agency as conservator of Savings and Loan on t11. On t12 the Office appointed the Agency as receiver for Savings and Loan.

On t4 the Agency, acting in its capacity as receiver for Savings and Loan, entered into a real estate contract (the Contract) for the sale of the Project to Corp M for a total consideration of \$c. Of this amount, \$d is to be paid in cash at the closing, which presently is scheduled for t3, and \$e will be financed by a purchase money mortgage with the Agency. On t5, Corp M amended and assigned the Contract to the Partnership for a nominal amount of consideration.

On t6, the Housing Agency under its low-income housing tax credit program provided a "Commitment Notice" to the Partnership for t7 low-income housing tax credits in the amount of \$f. This "Commitment Notice" was issued contingent upon the Partnership obtaining a waiver of the ten-year holding period requirement for existing buildings in section 42(d)(2)(B)(ii) of the Code.

The buyer's review period under the Contract was scheduled to expire on t8. When the Contract was amended and assigned to the Partnership, however, the buyer's review period was extended to t9. As of the date of this letter the buyer's review period has expired.

In a letter from Agency's National Office dated t10, Agency represents that Savings and Loan is in default under section 3 of the Federal Deposit Insurance Act.

Under section 1.42-2(d) of the Income Tax Regulations, the Partnership has also made the following representations with respect to the Project:

1. The acquisition of the Project is by purchase (as defined in 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 the 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 the Partnership as of the time the buildings were last placed in service.
3. The Project is being acquired from an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act), or from a receiver or conservator of such institution (as defined in section 42(d)(6)(D) of the Code).
4. To the best of the knowledge of the Partnership and the Partnership's representatives, there have been no nonqualified substantial improvements to the Project since it was last placed in service.
5. To the best of the knowledge of the Partnership and the Partnership's representatives, no prior owner of the Project was allowed a low-income housing tax credit under section 42 of the Code for the Project.
6. All terms and conditions of section 42 of the Code and related sections, including substantial rehabilitation of a minimum of \$3,000 per apartment unit, will be met, except for the 10-year holding period requirement of section 42 (d)(2)(b)(ii).
7. The date of purchase of the Project is after the date of enactment of the Omnibus Budget Reconciliation Act of 1989 (December 19, 1989) and, therefore, the purchase complies with the effective date of section 42(d)(6)(D) of the Code.
8. This application for the waiver is being timely filed within 12 months of the acquisition of the Project.

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 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.

However, section 42(d)(6)(D) 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 a taxpayer, the Secretary may waive this requirement with respect to any building if the Secretary (after consultation with the appropriate federal official) determines that the building is being acquired from an insured depository institution

in default (as defined in section 3 of the Federal Deposit Insurance Act) or from a receiver or conservator of such an institution.

Based upon the Partnership's representations and the letter dated t9 from the Agency's National Office stating that on t4 Agency was acting as receiver of Savings and Loan, and that Savings and Loan is an insured depository institution in default as required by section 42(d)(6)(D) of the Code, we rule that the 10-year holding period requirement under section 42(d)(2)(B)(ii) is waived with respect to the Partnership's acquisition of the Project.

No opinion is expressed or implied regarding whether the Partnership's costs of acquisition and rehabilitation of the Project will otherwise qualify for the low-income housing credit under section 42 of the Code.

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. 92-1, 1992-1 I.R.B. 9, 30. However, when the criteria in section 11.05 of Rev. Proc. 92-1 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

Sincerely yours,

James Ranson

Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)