

Private Letter Ruling 9247033, IRC Section 42

Date: August 26, 1992

Dear ***

This letter responds to your letter of April 15, 1992, submitted on behalf of Taxpayer 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)(8)(ii) of the Internal Revenue Code under the exception provided by section 42(d)(6)(D).

Taxpayer has made the following representations.

Taxpayer was organized on t1, as a State X partnership. Taxpayer was formed for the purpose of acquiring, developing, owning and operating Project. GP, Taxpayer's general partner, was incorporated under the laws of State X. Taxpayer is under the audit jurisdiction of the District Director in City X.

The Project was designed to consist of a buildings with b units located on c municipal lots. Construction commenced in t2, and d units in buildings e through f were completed before the developer instituted a bankruptcy proceeding, resulting in the transfer of the Project on t3 to Savings and Loan, the lender. The remaining units were in various stages of completion at that time.

In a letter dated t4, Agency 2's National Office represents that Savings and Loan was a federally insured depository institution and that Agency 1 was appointed receiver for Savings and Loan on t5. Upon the dissolution of Agency 1, Agency 2 became the receiver for Savings and Loan. According to Taxpayer the Project was last placed in service in t6, and on t7 Taxpayer acquired title to the Project from Agency 2, as receiver for Savings and Loan, for \$i. Taxpayer is in the process of completing only g units of the h units that were not completed by the original developer.

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

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 Project was not previously placed in service by Taxpayer, 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 Taxpayer as of the time the Project was 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 an institution.

4. To the best of the knowledge of Taxpayer and Taxpayer'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 Taxpayer and Taxpayer'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 the requirement in section 42(d)(2)(8)(iv) that a low-income housing credit is allowable to the Project under section 42(a) for substantial rehabilitation under section 42(e) will be met, except for the 10-year holding period requirement of section 42(d)(2)(B)(ii), and Taxpayer asks that this requirement be waived under the authority granted the Secretary of the Treasury by section 42(d)(6)(D).

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 Taxpayer's 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 non-qualified 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 Taxpayer's representations and the letter dated t4 from Agency 2's National Office, we rule that the 10-year holding period requirement under section 42(d)(2)(B)(ii) of the Code is waived with respect to Taxpayer's acquisition of the Project.

No opinion is expressed or implied regarding whether Taxpayer'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,

Donna M. Young

Assistant to the Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)