

Private Letter Ruling 9302009, IRC Section 42

Date: October 13, 1992

Dear ***

This is in response to your letter of June 19, 1992, written on behalf of Taxpayer, requesting a waiver of the 10-year holding period requirement of section 42(d)(2)(B) of the Internal Revenue Code under the exception provided by section 42(d)(6)(D).

Taxpayer has represented the following facts. Taxpayer is a not-for-profit corporation organized under the laws of State. Taxpayer's sole member is Company, which is also a not-for-profit corporation organized under the laws of State.

By deed dated a, Taxpayer acquired the Project from the Agency, as conservator for Bank 1. Bank 1 had, in turn, acquired the Project from Bank 2 by agreement dated c. Bank 2 had acquired the Project through foreclosure proceeding by deed dated d. Taxpayer acquired the Project, a single building, to rehabilitate it into decent, safe and sanitary low-income housing for qualified individuals.

In a letter dated h, the Agency confirmed that the Office appointed the Agency conservator for Bank 1 on c. The letter also stated that Bank 1, as of a, was an insured depository institution in default under section 3 of the Federal Deposit Insurance Act.

Taxpayer has received a reservation of low-income housing tax credit of \$e based on an estimated qualified basis of \$f.

Taxpayer also represents or certifies that:

- (1) the Project was acquired for consideration of \$b;
- (2) the Project was acquired by purchase as defined in section 179(d) of the Code, as applicable under section 42(d)(2)(D)(iii)(I);
- (3) it has no knowledge that the building was placed in service or underwent nonqualified substantial improvement (as defined in section 42(d)(2)(D)(i) of the Code) within the ten years prior to its acquisition of the building, but has been unable to prove, to the satisfaction of potential investors, that the building was not placed in service or substantially improved within this period;
- (4) 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;

(5) to the best of its knowledge, no prior owner of the Project was allowed a low-income housing credit under section 42 of the Code for the Project;

(6) without regard to the 10-year holding period requirement of section 42(d)(2)(B)(ii) of the Code, all terms and conditions of section 42 and related

sections, including substantial rehabilitation of a minimum of \$g per apartment unit, will be met; and

(7) the date of purchase of the building is after the date of the 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.

Because it is not known whether a period of at least 10 years had elapsed between Taxpayer's acquisition of the Project and the date it was last placed in service, the Project may not comply with the 10-year holding period requirement of section 42(d)(2)(B)(ii) 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) 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 (after consultation with the appropriate federal official) may waive this requirement with respect to any federally-assisted building if the Secretary 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, or to avert a claim against a Federal mortgage insurance fund (or such Department or Administration with respect to a mortgage that is so secured).

Section 42(d)(6)(D) of the Code states that a waiver may be granted under section 42(d)(2)(6)(A)(without regard to any clause thereof) with respect to any building 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.

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 Taxpayer 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 Taxpayer has acquired the Project 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 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 Taxpayer's acquisition of the Project.

No opinion is expressed or implied regarding whether Taxpayer'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) of the Code 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 in this ruling.

Sincerely yours,

James Ranson

Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)