

Private Letter Ruling 9304012, IRC Section 42

Date: October 29, 1992

Dear ***

This letter responds to your firm's letter of September 2, 1992, submitted on behalf of Partnership A, requesting a private letter ruling that will waive 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).

Partnership A has represented the following facts. Partnership A was formed under State X law by filing a certificate of limited partnership with the Secretary of State of State X on a. Partnership A was formed to acquire, rehabilitate, and operate the Project. The Project is an apartment complex containing l unit in m buildings. Partnership A is under the audit jurisdiction of the District Director in City X.

There are two general partners in Partnership A. The managing general partner is Corp A, a State X corporation, and the other general partner is Corp B, a State X non-profit corporation. The initial limited partner of Partnership A is M. Partnership A anticipates that M will withdraw from Partnership A on or about b. When M withdraws from Partnership A, Partnership B, a N limited partnership, will be admitted to the partnership as the sole limited partner. The percentage interests of the partners of Partnership A at the present time are as follows:

- 1) Corp A -- r percent;
- 2) Corp B -- s percent;
- 3) M -- t percent.

After M withdraws from Partnership A, Partnership B will own t percent of Partnership A, and Corp A and Corp B will continue to own r and s percent, respectively.

The Agency, as receiver for Bank 1, an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act, acquired the Project through foreclosure on a mortgage to Bank 1 from the former owners, Bank 2, on c. The Project was last placed in service on c.

The Office appointed the Agency as conservator for Bank 1 on d. On e, the Office appointed the Agency as receiver for Bank 1. In a letter from the Agency's National Office, dated u, the Agency acknowledges these appointments, and the fact that Bank 1 is an insured depository institution in default under section 3 of the Federal Deposit Insurance Act.

On f, the Agency, acting in its capacity as receiver for Bank 1, entered into a real estate contract for the sale of the Project (the "Contract") to Corp C, for a total consideration of \$n. Of this amount, \$o is to be paid in cash at the closing, and \$p will be financed by a purchase money mortgage with the Agency. Corp C, which owns all the stock of Corp A, amended and assigned the Contract to Partnership A as of g.

The buyer's review period under the Contract was originally scheduled to expire on i. When the Contract was amended and assigned to Partnership A, however, the buyer's review period was extended to j.

On h, the Housing Agency, pursuant to its low-income housing tax credit program, provided Partnership A with a k carryover allocation of low-income housing tax credit dollar amount.

Partnership A has also represented that:

- (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 Partnership A, or by a person who was a related person (as defined in section 42(d)(2)(D)(iii) of the Code) with respect to Partnership A;
- (3) to the best of knowledge of Partnership A and its representatives, no prior owner of the Project was allowed a low- income housing tax credit under section 42 of the Code for the Project or a rehabilitation credit under section 47 of the Code (or any prior section of the Code allowing a rehabilitation credit);
- (4) to the best of knowledge of Partnership A and its representatives, there have been no nonqualified substantial improvements to the Project since it was last placed in service;
- (5) 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);
- (6) the date of the purchase of the Project 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); and
- (7) the application for the waiver of the 10-year holding period requirement of section 42(d)(2)(b)(ii) of the Code is 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. 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)(D) 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 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 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 A's acquisition of the Project.

Temporary or final regulations pertaining to one or more 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.

No opinion is expressed or implied regarding whether Partnership A'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. A copy of this letter should be filed with the income tax return of Partnership A 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)