

Private Letter Ruling 9307010, IRC Section 42

Date: November 17, 1992

Dear ***

This letter responds to your letter of September 28, 1992 and subsequent correspondence submitted on behalf of the Partnership, requesting a private letter ruling that will waive the 10-year holding period requirement of section 42(d)(2)(B)(ii) of the Internal Revenue Code with respect to the buildings in the Project under the authority of the exception provided in section 42(d)(6)(A)(i) for the acquisition of certain federally-assisted buildings.

The Partnership has made the following representations.

The Partnership is a State M limited partnership with L and Corp A holding an h and i percent general partnership interest, respectively, and L holding a j percent limited partnership interest. The Partnership is under the examination jurisdiction of the District Director in City O. Although the Partnership has represented that an individual in a State M limited partnership may be both the general partner and limited partner, no opinion is expressed or implied regarding whether such a partnership would qualify as a partnership for federal tax purposes.

Corp B is an S corporation doing business in State N and is under the examination jurisdiction of the District Director in City P. Corp B originally placed the Project in service on t1 and made substantial improvements to it on t2.

The Project, located in City R, consists of b buildings comprised of a total of c apartment units plus a laundry/office and maintenance building. The Project was financed by a loan from the Farmers' Home Administration (FmHA) under section 515 of the Housing Act of 1949, and has had a history of financial problems, and is currently in default. In order to avert foreclosure, Corp B on t3 entered into a binding contract with the Partnership for the sale of the Project. Under the terms of the contract, the Partnership will pay Corp B \$d and assume the outstanding mortgage of \$e. The prior mortgagor was Corp B and FmHA is the mortgagee.

Because there was not a period of at least 10 years between the Partnership's acquisition of the Project and the date of the last substantial improvement, the Project does not comply with the 10-year holding period requirement under section 42(d)(2)(9)(ii) of the Code. In a letter dated t4, included with the ruling request, the Partnership has been informed that the Project has been designated a "troubled project" by the National Office of the Multiple Family Housing Servicing and Property Management Division of FmHA.

The Partnership estimates that rehabilitation costs will approximate \$g per apartment unit for each residential unit.

The Partnership has made the following additional representations and certifications with respect to the Project:

- (1) The acquisition of the buildings in the Project is by purchase (as defined under 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 at the time the buildings were last placed in service;
- (3) As of the time of this application for waiver, the buildings were "federally-assisted buildings" as defined in section 42(d)(6)(B)(iii) of the Code and section 1.42-2(c)(1) of the Income Tax Regulations;
- (4) As of the time of this application for waiver, federal mortgage funds with respect to the Project were at risk within the meaning of section 1.42-2(c)(2) of the regulations;
- (5) No prior owner of the buildings was allowed a low-income housing credit under section 42 of the Code for the buildings; and
- (6) The apartment units in the buildings are to be rehabilitated in a manner that satisfies 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, 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) to the effect that on 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' Home 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 such Acts are in effect on the date of enactment of the Tax Reform Act of 1986 (October 22, 1986).

Section 1.42-2 of the regulations contains requirements that must be satisfied to permit the waiver referred to in section 42(d)(6)(A) of the Code. You have represented that the Partnership is in compliance with these requirements.

Based on the above facts and the Partnership's representations 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 above facts and representations as submitted we rule as follows:

The 10-year holding period requirement under section 42(d)(2)(B)(ii) of the Code 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 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 Partnership, which requested it. Section 6110(j)(3) 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 the Partnership for the taxable year in which the transaction covered by this ruling is consummated.

We are sending a copy of this letter to the FmHA in accordance with that agency's request.

Sincerely yours,

James Ranson

Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)