Private Letter Ruling 9308023, IRC Section 42

Dear ***

This letter responds to your letter dated June 8, 1992 and received by this office on October 30, 1992, and subsequent correspondence submitted on behalf of Partnership 1 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 with respect to the proposed acquisition of the Project from the receiver of an insured financial institution in default under the exception provided in section 42(d)(6)(D).

Partnership 1 has made the following representations.

Partnership 1 is a State N limited partnership with Corp L as the general partner and with M and Partnerships 2, 3 and 4 as the limited partners. Corp L, M, Partnership 2, Partnership 3 and Partnership 4 have b, c, d, e and f percent interests, respectively, in Partnership 1. Partnership 1 is under the examination jurisdiction of the District Director in City O.

The Project consists of g apartment units housed in h buildings, located in City O of State N. These buildings have been in continuous service since the date of construction, t1. On t2, the Project was acquired by the Association by foreclosure, and on t3 Agency 1 was appointed receiver for the Association.

On t5, Partnership 1 acquired the Project from Agency 1, as receiver for the Association, for $i without assuming any liabilities. Partnership 1 represents that it acquired the Project for the purpose of providing affordable housing to qualified, low-income households and has applied to Agency 2 for an allocation of housing credit dollar amount under section 42(h) of the Code. This application requests the 30-percent present value tax credit on the eligible basis of the acquisition costs for the buildings, and the 70-percent present value tax credit on new rehabilitation costs. Partnership 1 estimates that rehabilitation costs will approximate $j, per apartment unit for each building.

On t6, K, an attorney from Agency 1's National Office, submitted a letter to this office stating that as of t4, the date the deed to the Project was conveyed to Partnership 1, Agency 1 was the receiver for the Association, an institution in default as defined in section 3 of the Federal Deposit Insurance Act (Act).

Partnership 1 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 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 Partnership 1, 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 Partnership 1 as of the time the Project was last placed in service;

3. As of the earlier of the time of acquisition of the Project or the time of the application for the waiver, the Project is being acquired from an insured depository institution in default (as defined in section 3(x)(1) of the Act), or from a receiver or conservator of such institution (as defined in section 42(d)(6)(D));

4. To the best of the knowledge of Partnership 1 and Partnership 1's representatives, there have been no nonqualified substantial improvements to the buildings in the Project since they were last placed in service;

5. To the best of the knowledge of Partnership 1 and Partnership 1'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 and related sections of the Code, including substantial rehabilitation of a minimum of $3,000 per apartment unit, will be met, except for the 10-year holding period requirement provided by section 42(d)(2)(B)(ii), and Partnership 1 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 will be after the date of enactment of the Revenue 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; and

8. The application for the waiver is being timely filed after 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 earned. 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) to the effect that on 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(x)(1) of the Act) or from a receiver or conservator of such an institution.

Based upon Partnership 1's representations, and the letter dated t6 from Agency 1 that Partnership 1 acquired the Project from a receiver of an insured depository institution in default under section 42(d)(6)(D) of the Code, we rule that the 10-year holding period requirement under section 42(d)(2)(B)(ii) of the Code is waived with respect to Partnership 1's acquisition of the Project.

No opinion is expressed or implied regarding whether Partnership 1'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)(3) 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 the ruling. See section 11.04 of Rev. Proc. 1991-1 I.R.B. 9, 30. However, when the criteria in section 11.05 of Rev. Proc. 91-1 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 & Special Industries)