

Private Letter Ruling 9309044, IRC Section 42

Date: December 9, 1992

Dear ***:

This letter responds to your firm's letter of September 2, 1992, submitted on behalf of Taxpayer, 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).

Taxpayer has represented the following facts. Taxpayer is a State A limited partnership that was organized to acquire the Project, an existing low-income residential rental housing project located in City C. The sole general partner of Taxpayer is GP, a State A corporation. The sole limited partner is R. Taxpayer's federal income tax returns are subject to the examination jurisdiction of the District Director in City A.

The Project consists of h buildings containing a total of i two and four bedroom apartment units on an approximately j acre site, and an on-site management office. The current owner of the Project is Seller, a State B limited partnership. Seller acquired the Project from Corp M. The current mortgagor is Corp M and the current mortgagee is F. The Project is subject to mortgage indebtedness in the original principal amount of \$k, insured by the Agency pursuant to section 236 of the National Housing Act. The current balance under the mortgage note is approximately \$l.

On d, R, as nominee for Taxpayer, entered into a real estate sales contract (the "Contract") to purchase the Project from Seller. On e, R assigned all his rights, title, and interest in the Contract to Taxpayer. The Contract is a binding obligation between the Seller and Taxpayer. Under the Contract, Taxpayer will pay a purchase price equal to the outstanding balance of principal and accrued interest under the mortgage note plus n, or another amount that will be approved by the Agency. At closing, the mortgage will be modified to substitute Taxpayer as the mortgagor. The Project's qualification for low-income housing tax credits is a condition of the Contract. If the Project qualifies for low-income housing tax credits, Taxpayer will be able to raise funds from investors to purchase the Project. The Contract expires on c.

On a, Taxpayer entered into a carryover allocation agreement for the Project with the Authority. To comply with the carryover allocation agreement, Taxpayer must expend at least 10 percent of the reasonably expected basis in the Project by m. Taxpayer expects to meet this requirement by purchasing the Project on or before c.

On n, Seller entered into a regulatory agreement with the Agency with respect to the Project, pursuant to section 236 of the National Housing Act. In addition, the Agency has entered into two separate Housing Assistance Payment Contracts that, when combined, cover all of the units in the Project. As a result, Taxpayer represents that the Project is

eligible for, and currently receives, rental assistance under section 8 of the United States Housing Act of 1937 for all of the residential units in the Project.

Taxpayer has also represented that:

- (1) the acquisition of the Project will be 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 Taxpayer, or by a person who was a related person (as defined in section 42(d)(2)(D)(iii) of the Code) with respect to Taxpayer;
- (3) to the best of knowledge of Taxpayer 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;
- (4) to the best of knowledge of Taxpayer and its representatives, there have been no nonqualified substantial improvements to the Project, within the meaning of section 42(d)(2)(D)(i) of the Code, 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 will be after the date of the enactment of the Omnibus Budget Reconciliation Act of 1989 (December 19, 1989) and, therefore, the purchase will comply with the effective date of section 42(d)(6)(D); and
- (7) the Project was last placed in service by the Seller on or about o.

In a letter dated p, the Agency states that the Project has been designated a "troubled 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)(A)(i) 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 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 the Acts were 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 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 is in compliance with these requirements, and have provided documents that sufficiently substantiate your representations.

Based on the facts, representations, and documents submitted, 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 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 Taxpayer 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)