

Private Letter Ruling 9309047, IRC Section 42

Ten-Year Holding Period Requirement Waived.

The Service has granted a waiver of the 10-year holding period under section 42(d)(2)(B)(ii) for a partnership's acquisition of a low-income housing project. The Service determined that, in accordance with section 42(d)(6)(A), the waiver was necessary to avert an assignment of the mortgage securing the property to a governmental agency.

Date: December 9, 1992

Dear ***

This letter responds to your letter dated October 6, 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 is a State M limited partnership, of which Corp N and individual O are the general partners.

The Project is a b-unit apartment complex housed in c buildings located in City P. Each of the buildings has d two-bedroom units and d three-bedroom units per building. One of the three-bedroom units is designated as a manager's unit.

The Project was originally constructed and placed in service on t1 and no substantial improvements have been made to the Project since its original construction. The Project was financed by a loan from the Farmers' Home Administration (FmHA) under section 515 of the Housing Act of 1949. This loan is currently in default. In a letter dated t2, included as part of the ruling request, the Partnership has been informed that the Project has been designated a "troubled project" by the National Office of the Multiple Federal Housing Servicing and Property Management Division of FmHA.

On t3, the Partnership acquired the Project from the prior owner (Seller). Consideration for the acquisition consisted of the assumption, by the Partnership, of the outstanding mortgage of approximately \$f as well as a cash contribution of \$g. The \$g contribution represents the amount necessary to pay the taxes and other Project-related obligations. The Partnership estimates that rehabilitation costs will approximate \$h, with an average cost of \$i per apartment unit.

Because there was not a period of at least 10 years between the Partnership's acquisition of the Project and the date the Project was last placed in service, the Project does not comply with the 10-year holding period requirement under section 42(d)(2)(B)(ii) of the

Code. Therefore partnership has submitted this request for a private letter ruling that will waive the holding period requirement.

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

- (1) The acquisition of 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 t4, the buildings in the Project were "federally- assisted buildings" as defined in sections 42(d)(6)(B)(iii) of the Code and 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) There have been no nonqualified substantial improvements to the buildings in the Project since they were last placed in service;
- (6) No prior owner of the buildings was allowed a low-income housing credit under section 42 of the Code for the buildings in the Project; and
- (7) The apartment units in the Project's buildings are to be rehabilitated in a manner that satisfies the requirements of section 42(d)(2)(B)(iv) and 42(e) of the Code;
- (8) This application for the waiver is being timely filed within 12 months 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 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)(B)(3) of the Code defines the term "federally- assisted building" as including any building that is substantially assisted, financed, or operated under (i) section 8 of the United States Housing Act of 1937, (ii) section 221(d)(3) or 236 of the National Housing Act, or (iii) 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. The Partnership has represented that it 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 of 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 cost of acquisition and rehabilitation of the buildings in the Project will otherwise qualify 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)