

Private Letter Ruling 9310033, IRC Section 42

Date: December 15, 1992

Dear ***

This letter responds to your letter of August 25, 1992, and subsequent correspondence, submitted on behalf of Partnership 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, under the exception provided in section 42(d)(6)(D).

Partnership is 100% owned by M and N with N fulfilling the duties of the operating partner. Partnership represents that after the Project is rehabilitated it will be syndicated to limited partners. Partnership was organized under the laws of State A and is under the audit jurisdiction of the District Director in City O.

The Project is located in City O and consists of a building housing b studio apartment units. Partnership represents that the building was erected in t1, is a c-story brick with stucco construction and has a flat roof. Originally a mansion, the building was renovated into studio apartments and will remain so after acquisition by the Partnership. Access to the upper level apartments is from outside staircases.

The Project had been acquired by P, on t2, and financed through a mortgage from Association. In t3, Association foreclosed on the mortgage and acquired the Project.

On t7, Agency 1 was appointed as conservator of Association's assets as an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act), and, on t8, was appointed as receiver for Association. Included in this receivership was the Project. On t4, Partnership purchased the Project, from Agency 1, for a consideration of \$d. Assistance in acquiring the Project was provided by a local development corporation (Agency 2) through a new first mortgage of \$. The sale of the Project is evidenced by a special warranty deed from Agency 1 transferring title in the Project to Partnership.

Partnership acquired the Project for the purpose of providing affordable housing to qualified low-income households. Partnership has applied for and received an allocation of t5 low-income housing credit dollar amounts from Agency 3 of State A.

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 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, 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 as of the time the Project was last placed in service.
3. Partnership has obtained a letter from Agency 1, dated t6, stating that Agency 1 is the receiver for Association.
4. 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 of the Federal Deposit Insurance Act), or from a receiver or conservator of such institution (as defined in section 42(d)(6)(D) of the Code).
5. To the best of the knowledge of Partnership and its representatives, there have been no nonqualified substantial improvements to the Project since it was last placed in service.
6. To the best of the knowledge of Partnership 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.
7. All terms and conditions of section 42 and related sections of the Code will be met, including substantial rehabilitation of a minimum of \$3,000 per apartment unit, except for the 10-year holding period requirement provided by section 42(d)(2)(B)(ii), and Partnership asks that this requirement be waived under the authority granted the Secretary of the Treasury by section 42(d)(6)(D).
8. The date of purchase of the Project was 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.
9. 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 the 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.

However, 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 of the Federal Deposit Insurance Act) or from a receiver or conservator of such an institution.

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

No opinion is expressed or implied regarding whether 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 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. 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. A copy of this letter should be filed with the federal income tax returns for the Partnership and the respective partners for the taxable year in which the transaction covered by this ruling is consummated.

Sincerely yours,

Walter H. Woo

Senior Technician Reviewer, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs & Special Industries)