

Private Letter Ruling 9311007, IRC Section 42

Date: December 14, 1992

Dear ***

This letter responds to your letter of August 12, 1992, and subsequent correspondence 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)(A)(i) for certain federally-assisted buildings acquired during the 10-year period.

Taxpayer, a State X limited partnership consisting of T as the general partner and Corp 1 as the limited partner, has represented the following facts. Taxpayer has submitted an application with the Farmers' Home Administration (FmHA) to acquire the Project from Seller, a State X limited partnership, and substantially rehabilitate the Project. The Project is an apartment complex consisting of h two-story buildings containing i units per building. The Project contains a total of j one-bedroom units, k two-bedroom units, l a square foot office building, and m parking spaces.

Taxpayer intends to acquire the Project from Seller before the end of a and rehabilitate it by b or c. Seller financed the Project with a section 515 Rural Rental Housing (RRH) Loan that is currently in default, and placed the Project in service on d.

By letter dated October 5, 1992, you have represented that the binding contract between Taxpayer and Seller, dated r, for the sale of the Project is contingent upon receiving a waiver from the Internal Revenue Service of the 10-year holding period requirement. The total consideration for the acquisition of the Project as of q was \$m, and the total cost of acquisition and rehabilitation of the Project will be approximately \$n.

Taxpayer also represents the following:

(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) There have been no nonqualified substantial improvements to the buildings in the Project since they were last placed in service;

(3) 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)(II) of the Code) with respect to Taxpayer as of the time the buildings were last placed in service;

(4) No prior owner of the Project was allowed a low-income housing tax credit under section 42 of the Code for the buildings in the Project;

(5) The apartment units in the Project are to be rehabilitated in accordance with the requirements of sections 42(d)(2)(B)(iv) and 42(e) of the Code;

(6) The buildings are "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; and

(7) As of the date of Taxpayer's application for waiver of the 10-year holding period requirement, federal funds were at risk within the meaning of section 1.42-2(c)(2) of the regulations.

Because there will not be a period of at least 10 years between Taxpayer's acquisition of the Project and the date it was last placed in service, the Project will not comply with the 10-year holding Period requirement of section 42(d)(2)(B)(ii) of the Code.

In a letter dated e, the National Office of the Multiple Family Housing Services and Property Management Division of the FmHA has stated that it has reviewed the financial condition of the Project, and has designated the Project as 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 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 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 substantiate your representations.

Based upon the facts, representations, and documents submitted, 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. Therefore, we rule that the 10- year holding period requirement under section 42(d)(2)(B)(ii) 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,

Donna M. Young

Assistant to the Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)