

Private Letter Ruling 9311035, IRC Section 42

Date: December 21, 1992

Dear ***

This letter responds to your letter of November 19, 1992, and subsequent correspondence submitted on behalf of Partnership, 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 authority of the exception for the acquisition of certain federally-assisted buildings provided in section 42(d)(6)(A)(i).

Partnership was organized as a State M limited partnership on January 14, 1992, with N as the general partner, holding a g percent interest, and N's wife, O, as the limited partner, holding a h percent interest. Partnership was formed solely for the purpose of acquiring the subject Project. It is represented that future plans provide that N's interest will be reduced to h percent, O will withdraw, and an investment limited partner owning a g percent limited partnership interest will be admitted.

The Project was constructed and placed in service by the former owner, Seller, a State M partnership, in t1. Federal assistance for the original Project was provided through a loan from the Farmers' Home Administration (FmHA) under the authority of section 515 of the Housing Act of 1949.

The Project consists of a b apartment units arranged in c buildings composed of c units per building and a tractor storage shed all situated on a 25ft. x 125ft. parcel of land in City P. Building one contains the apartment rental office, storage, and laundry in addition to its c residential units. All of the buildings are of a brick veneer type of construction. You represent that the Project has a history of financial distress and the mortgage is currently in default. FmHA stopped short of foreclosure as the result of an agreement by Partnership to acquire the Project from Seller.

Partnership acquired the Project by purchase from Seller on t2. The consideration paid included the assumption of the outstanding mortgage balance of \$d as well as the payment of delinquent real and personal property taxes of \$e as well as legal and transfer fees of \$f. The prior mortgagor was the Seller, and FmHA is the mortgagee. In addition, Partnership represents that it plans to expend approximately \$i to rehabilitate the Project, or \$j per apartment unit.

Since the interval between t1 and t2 is less than 10 years, Partnership fails to meet the holding period requirement of section 42(d)(2)(B)(ii) of the Code for existing buildings. As federal funds are at risk, Partnership has submitted this request for a waiver of the 10-year holding period requirement under the authority of the exception granted by section 42(d)(6)(A)(i).

In a letter dated t3, Partnership has been informed that the Project is a "troubled project" by the Multiple Family Housing Servicing and Property Management Division of the National Office of FmHA. A copy of this letter is attached to the request for ruling.

Partnership has made the following representations and certifications with respect to the Project.

(1) The acquisition of the buildings in 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) Partnership acquired the buildings in the Project for the purpose of providing affordable housing to qualified low- income households.

(3) The buildings in the Project were 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 at the time the buildings were last placed in Service;

(4) As of t1, 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;

(5) As of t4, federal mortgage funds with respect to the Project were at risk within the meaning of section 1.42-2(c)(2) of the regulations;

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

(7) No prior owner of the b units was allowed a low-income housing credit under section 42 of the Code for the buildings; and

(8) All terms and conditions of section 42 and related sections of the Code, including substantial rehabilitation in conformance with the minimum expenditures required by section 42(e)(3), will be met, except for the 10-year holding period requirement provided by section 42(d)(2)(B)(ii). Partnership asks that this requirement be waived under the authority granted the Secretary of the Treasury by section 42(d)(6)(A)(i).

(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 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)(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 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 (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. You have represented that Partnership is in compliance with these requirements.

Based on the above facts and Partnership's representations we have determined that the buildings in the Project are federally- assisted buildings with 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 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 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 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 F. RANSON

Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)

