Private Letter Ruling 9322015, IRC Section 42

Date: March 8, 1993

Dear ***

This letter responds to your letter of September 30, 1992, and subsequent correspondence submitted on behalf of Partnership 1 requesting a private letter ruling that will waive for the Building the 10-year holding period requirement for existing buildings of section 42(d)(2)(B)(ii) of the Internal Revenue Code with respect to the proposed acquisition of the Building from the receiver of an insured financial institution in default under the exception provided in section 42(d)(6)(D).

Partnership 1 has made the following representations. Partnership 1 is a State R limited partnership. Corp M is sponsoring a project to renovate the Building, a single room occupancy hotel, and to operate the hotel as a low-income housing facility. Corp M will act as sponsorship of Partnership 1 and will arrange for the sale of limited partnership interests to investors. A wholly owned for-profit subsidiary of Corp M will act as general partner of Partnership 1, which is under the examination jurisdiction of the District Director in City P.

The Building will consist of b apartment units located in City P, state Q. Until t1, the Company owned the Building. On t2 the Company sold the Building to Partnership 2, which financed the purchase through a purchase-money mortgage from the Company with the Company continuing to manage the Building. On t3, Partnership 2 sold the Building to Corp N, a City P not-for-profit corporation that is tax-exempt under section 501(c)(3) of the Code. Corp N acquired the Building subject to the Company's purchase money mortgage and also borrowed funds from the Association. The Association loan was secured by a second mortgage on the Building.

On t4, Corp N sold the Building to Corp O subject to the Company and Association mortgages, although Corp N remained liable for payment of the Association mortgage. At the time of the sale, the unpaid principal amount of the mortgages totaled more than $d million, of which the Association mortgage represented almost $e. The Association, a federally insured savings and loan institution, filed for receivership on t5. Also, on t5, Agency 1 was appointed conservator for the Association, and on t10 Agency 1 was appointed receiver for the Association.

Corp O, unable to meet the mortgage obligations, filed for bankruptcy in the United States Bankruptcy Court for the District. At the time of filing, the amount of the mortgages greatly exceeded the value of the Building. Instead of foreclosing on the property, there was an auction of the Building on t6. At the auction the highest bid was by the Company, which offered to acquire the Building for the remaining balance of its mortgages. The bankruptcy court approved the auction sale on t7, but postponed the closing of the sale to ally another buyer to come forward.

Corp M, a not-for-profit corporation, was formed solely for the purpose of rehabilitating the Building and operating it as a low- income housing location. Corp M sought financing for the Building from Agency 2. A principal condition of the financing was that the Building would receive equity contributions from syndication of interests in the Building. At all times, Agency 2 and Corp M anticipated that Partnership 1 would own and operate the Building and would issue equity interests to limited partner investors. The acquisition of the Building would not have been possible without the equity financing to be received from limited partners, which in turn depends on the availability of the low-income housing credit under section 42 of the Code.

On t8, Corp M acquired the Building from Corp O. Corp M borrowed from Agency 2 the funds necessary to retire the mortgage held by the Company, and also paid certain amounts reflecting operating expenses of the Building from t6. Corp O, which had remained record owner of the Building, transferred the Building directly to Corp M. The bankruptcy judge erased most claims against the Building as of t6, including The Association's security interest. The consideration for the sale was $c, including the amount of the Company mortgage.

In accordance with the acquisition agreement, Partnership 1 will acquire ownership of the Hotel. Corp M will transfer the Building to Partnership 1. The consideration for the transfer will be the assumption of the liabilities now encumbering the building-principally loans from Agency 2 for the acquisition and renovation of the Hotel. Corp M expects the purchase to occur no later than t9.

In a letter dated t11, S, an officer of Agency 1 stated that on t10 Agency 1 became receiver for the Association, an insured depository institution in default as defined in section 3 of the Federal Deposit Insurance Act (Act). S also stated that Agency 1 (i) possessed a mortgage interest in the Building (ii) had effective control along with Corp N over disposition of the Building and (iii) took steps to force the sale of the Building. As a result of the sale Agency l was able to recapture from Corp N almost the entire amount owed to the Association.

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)(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 Act) or from a receiver or conservator of such an institution.

Based upon Partnership 1's representations, and the letter dated t12 from Agency 1, Partnership 1 did not acquire the Building from an insured financial institution in default as defined in the Act or from a receiver or conservator of such an institution. Consequently, we rule that the 10-year holding period under section 42(d)(2)(B)(ii) of the Code is not waived with respect to Partnership 1's proposed acquisition of the Building.

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. 93-1, 1993-1 I.R.B. 10, 39. However, when the criteria in section 11.05 of Rev. Proc. 93-1 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

Sincerely yours,

James F. Ranson

Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)