

Private Letter Ruling 9324020, IRC Section 42

Date: March 19, 1993

Dear ***

This is in response to your letter of January 4, 1993, submitted on behalf of M, 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).

The Project consists of a b buildings housing c apartment units, located on approximately 8.76 acres of land in City P. The Project is located in a City P Community Development Block Grant targeted area, a City P enterprise zone and a Department of Housing and Urban Development (HUD) qualified census tract, as defined in section 42(d)(5)(C) of the Code.

Prior history of the Project indicates that it was previously owned by N and financed through a mortgage from Association 1. Subsequently, N defaulted on the mortgage and, on t1, Association 1 repossessed the Project through a public auction at the county courthouse in City P. In t2, Association 1 was acquired by Association 2. On t3, Agency 1 was appointed conservator of Association 2, an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act) and, on t4, Agency 1 was appointed receiver for Association 2.

On t5, M purchased the Project from Agency 1, which was acting as conservator for Association 2, for the purpose of providing affordable housing to qualified low-income households. Consideration for the acquisition was \$h which included a cash payment of \$i and a loan from Agency 1 of \$j. In addition M incurred transfer costs, primarily for taxes, insurance, an d interest, of \$k. M applied for and received a t6 annual low-income housing tax credit allocation of \$d from the State A housing credit agency, Agency 2. The allocation includes the 30 percent present value tax credit, of approximately \$e per year, on the eligible basis of the acquisition costs and the 70 percent present value tax credit, of \$f per year, on the estimated rehabilitation costs. In addition, M represents that the Project is located in a HUD qualified census tract, and, therefore, the rehabilitation costs are eligible for the 30 percent increase in eligible basis under the provisions of section 42(d)(5)(C)(i)(II) of the Code. The State A housing credit dollar amounts were approved by Agency 2 through a carryover allocation issued on t7. M estimates that rehabilitation costs will average \$g per apartment unit in each building and, therefore, complies with the minimum rehabilitation expenditure requirement of section 42(e)(2)(A).

The Project presently has qualified low-income families benefiting from the rent-restricted rents as stated in the HUD income tables. In anticipation of receiving the waiver M is making good faith efforts to market the remaining apartments to qualified low- income households.

For an existing building to qualify for the 30 percent present value housing tax credit, section 42(d)(2)(B)(ii) of the Code requires there be a period of at least 10 years between the date of the building's acquisition by the taxpayer and the later of:

1. The date the building was last placed in service, or
2. The date of the most recent nonqualified substantial improvement of the building.

As a further clarification of the placed in service date section 42(d)(2)(D)(ii)(iv) of the Code provides an additional limitation of one year on the holding period for property received in a foreclosure. In this situation the period between the date of foreclosure by Association 1, t1, and the date of sale to M, t5, exceeds one year. Therefore, in accordance with the limitation provided in section 42(d)(2)(D)(ii)(IV), the foreclosure date is a new placed in service date for the Project. Based on this fact, M's purchase of the Project has failed the 10-year holding period requirement of section 42(d)(2)(B)(ii) of the Code and resulted in this request for a waiver of the 10-year holding period requirement.

M 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 M, 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. M has obtained a letter from Agency 1, dated t8, stating that Agency 1 was the conservator, and subsequently became the receiver, for Association 2.
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 a conservator of an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act).
5. To the best of the knowledge of M and his 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 M and his 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 M 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 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 M and the fact that he acquired the Project from Agency 1 as conservator 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 M's acquisition of the Project.

No opinion is expressed or implied regarding whether M'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 temporarily 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. A copy of this letter should be filed with the federal income tax return for M for the taxable year in which the transaction covered by this ruling is consummated.

Sincerely yours,

James F. Ranson

Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs & Special Industries)