

Private Letter Ruling 9333009, IRC Section 42

Date: May 20, 1993

Dear ***

This letter responds to a letter dated February 11, 1993, and subsequent correspondence submitted on behalf of the Corporation 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 Corporation has made the following representations:

The Corporation is a State corporation located in City A and is under the examination jurisdiction of the District Director in City B.

The Project is located in City A and consists of b apartment units housed in c buildings located on d acres. The b units consist of e efficiency units, f one bedroom units, and g two bedroom units. All units will be low-income units. The Project, which was originally completed on t1, was acquired by the Association from the Company on t2.

On t3, the Agency became receiver for the Association and, as a result, acquired the Project at that time. On t4, the Agency, as receiver for the Association, entered into the Contract to sell the Project to the Corporation and closed on this transaction on t5. The total consideration paid by the Corporation for the Project, was \$h in cash. The Corporation represents that it will expend approximately \$i to rehabilitate the buildings in this Project, and this equates to over \$j per apartment unit.

On t6, M, an attorney from the Agency's National Office, submitted a letter to this office stating that the Agency was the receiver for the Association as of the time the Corporation's purchase offer was accepted by the Agency.

The Corporation has made the following additional representations and certifications with respect to the Project:

1. The acquisition of the buildings in 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 buildings in the Project were not previously placed in service by the Corporation, 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 the Corporation as of the time the Project was last placed in service;
3. The Corporation has obtained a letter from the Agency dated t6 stating that the Agency is the receiver for the Association;

4. To the best of the knowledge of the Corporation, and its representatives, there have been no nonqualified substantial improvements to the Project since it was last placed in service as defined in section 42(d)(2)(D)(i) of the Code;
5. To the best of the knowledge of the Corporation, and its representatives, no prior owner of the buildings in the Project was allowed a low-income housing tax credit under section 42 of the Code for the Project;
6. All units in the buildings are to be rehabilitated in a manner that satisfies the requirements of sections 42(b)(2)(B)(iv) and 42(e) of the Code;
7. The date of purchase of the Project is 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; and
8. 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 allowable. Section 42(d)(2)(8)(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 Federal Deposit Insurance Act) or from a receiver or conservator of such an institution.

Based upon the representations of the Corporation and the letter dated t6 from the Agency stating that the Corporation acquired the Project from a receiver of an insured depository institution in default, under section 42(d)(6)(D) of the Code we rule that the 10- year holding period requirement under section 42(d)(2)(B)(iii) is waived with respect to the Corporation's acquisition of the Project.

No opinion is expressed or implied regarding whether the costs of acquisition and rehabilitation of the buildings in the Project will otherwise qualify 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. 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,

James Ranson

Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs & Special Industries)