

Private Letter Ruling 9333012, IRC Section 42

Ten-Year Holding Period Waived.

The Service has granted a partnership engaged in the rehabilitation of a low-income housing project, a waiver of the 10- year holding period under section 42(d)(2)(B)(ii), finding that the waiver is necessary to avert an assignment of the mortgage secured by the property in the project to the Department of Housing and Urban Development.

Date: May 20, 1993

Dear \*\*\*

This letter responds to your letter of March 12, 1993, and subsequent correspondence submitted on behalf of the Partnership, requesting a private letter ruling that will waive the 10-year holding period requirement of section 42(d)(2)(B)(ii) of the Internal Revenue Code with respect to the buildings in the Project under the authority of the exception provided in section 42(d)(6)(A)(i) for the acquisition of certain federally-assisted buildings.

The Partnership has made the following representations.

The Partnership is a State B limited partnership with Corp F and Corp G as the general partners and J as the limited partner. Corp F and Corp G respectively own a c and d percent partnership interest in the Partnership, and J owns an e percent partnership interest. The Partnership is under the examination jurisdiction of the District Director in City A.

The Project, located in City A, consists of b buildings containing a total of c apartment units. Of these units f are 2- bedroom units, g are 3-bedroom units, and e are 4-bedroom units.

On t3, the Partnership acquired the Project from the Seller for the total purchase price of \$h. The purchase price was paid by the assumption of the existing mortgage, which had an outstanding principal balance as of t3 of \$h. The mortgagee was the Company and the original mortgagor was the Seller.

The Project was originally and last placed in service in t1, as a U.S. Department of Housing and Urban Development ("HUB") section 221(d)(4) project. Less than 10 years had expired between the date the Project was last placed in service by the Seller and the date the Project was acquired by the Partnership. The Project is currently managed by Corp H, a State 9 corporation, and is being operated under section 8 of the United States Housing Act of 1937. The Project presently receives 100 percent section 8 rental assistance from HUD. No nonqualified substantial improvements (as defined in section 42(d)(2)(D)(i)) have been made to the Project since it was placed in service in ti.

Between the time the Project was originally placed in service and its subsequent acquisition by the Partnership, the Project suffered from serious physical deterioration. The Project repeatedly received ratings of "unsatisfactory" in annual HUD Management Review Reports. The Partnership believes that the Project will require expenditures in excess of \$i for capital improvements over the next five years. Because of such serious physical deterioration, the Project properties have contributed substantially to the deterioration of the neighborhoods in which the Project properties are located. Local government officials and residents have complained for many years that the Project properties have been havens for drug dealers, prostitutes, and other criminal elements. From a financial prospective, the Project has suffered operating losses for at least the past three years of operation. Both the Seller and the Seller's prior manager, Corp I, failed to address the deteriorating condition of the Project. The failure to adequately maintain the Project constitutes an event of default under the mortgage documents.

Because of the serious physical, financial and community deterioration, the Project was designated by HUD's National Office, on t2, as a "troubled project" within the meaning of section 1.42- 2(c)(3) of the Income Tax Regulations.

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

(1) The acquisition of the buildings in the Project was by purchase (as defined under section 179(d)(2) of the Code as applicable under section 42(d)(2)(D)(iii)(I));

(2) The Partnership acquired the buildings in the Project for the purpose of providing affordable housing to qualified low-income households. The Partnership further represents that it has received a carryover allocation of a housing credit dollar amount from the appropriate agency of State B under the provisions of section 42(h)(3)(C)(ii) of the Code;

(3) The buildings in the Project were not previously placed in service by the 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 the Partnership at the time the buildings were last placed in service;

(4) Each building in the Project is a "federally-assisted building" as defined in sections

42(d)(6)(B) of the Code and 1.42- 2(c)(1) of the regulations because each building receives 100 percent rental assistance from HUD under section 8 of the United States Housing Act of 1937;

(5) As of the time of the application for waiver, 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 Project was allowed a low-income housing credit under section 42 of the Code for the buildings;

(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). The Partnership asks that this requirement be waived under the authority granted the Secretary of the Treasury by section 42(d)(6)(A)(i); and

(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 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) 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 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 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 1 is in compliance with these requirements.

Based on the above facts and the Partnership's representations 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.

Based on the above facts and representations as submitted we rule as follows:

The 10-year holding period requirement under section 42(d)(2)(B)(ii) of the Code is waived with respect to the Partnership's acquisition of the Project.

No opinion is expressed or implied regarding whether the 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 the 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 the Partnership for the taxable year in which the transaction covered by this ruling is consummated.

We are sending a copy of this letter to HUD in accordance with that agency's request.

Sincerely yours,  
James Ranson  
Chief, Branch 5  
Office of the Assistant Chief Counsel  
(Passthroughs and Special Industries)