

Private Letter Ruling 9335020, IRC Section 42

Ten-Year Holding Period Waived.

The Service has granted a partnership a waiver of the 10-year holding period requirement under section 42(d)(B)(ii). The partnership will acquire the housing project from a receiver of an insured depository institution now in default, as required by section 42(d)(6)(D).

Date: June 2, 1993

Dear \*\*\*

This letter responds to your letter of February 24, 1993, submitted on behalf of Partnership 1 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).

Partnership 1 is a State A limited partnership with Partnership 2, a limited partnership, as the general partner with a i percent interest in Partnership 1. The limited partners of Partnership 1, prior to the admission of the tax credit limited partners, are O with a k percent interest, P with a j percent interest, and l other unrelated individuals with a m percent interest.

The general partner of Partnership 2 is Corp Q, which is owned h percent by O and n percent by P. The limited partner of Partnership 2 is Corp R, which is owned n percent by P and h percent by O.

The Project consists of b buildings housing c apartment units located on a d acre parcel of land in City B. The Project was previously financed by a mortgage from Association to Borrower. On t1, Agency 1 was appointed receiver for Association, an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act).

Borrower subsequently defaulted on the mortgage from Association and, on t2, Agency 1, as receiver for Association, repossessed the Property. On t3, Corp N, a corporation wholly owned by O entered into a binding contract with Agency 1, as receiver for Association, to acquire the Project. On t4, Partnership 1 purchased the Project from Agency 1 for a cash consideration of \$. The repossession of the Project is evidenced by a substitute trustee deed, submitted with the ruling request, and the sale to Partnership 1 is evidenced by copies of the offer to purchase agreement and the special warranty deed from Agency 1, as receiver for Association.

Partnership 1 applied for and received a t5 housing credit dollar amount carryover allocation of \$f per year from Agency 2, in order to comply with the state credit limitations provided in section 42(h)(3) of the Code. This allocation includes the 30-percent present value tax credit on the eligible basis of the acquisition costs, and the 70-

percent present value tax credit on the new rehabilitation costs. Partnership 1 estimates that the rehabilitation costs will average \$g per apartment unit and, therefore, meets the minimum rehabilitation expenditure requirement of section 42(e)(3)(A).

The Project currently has qualified low-income families that benefit from restricted rent requirements contained in the Department of Housing and Urban Development tables. Partnership 1 represents it is making good faith efforts to market the apartments to other qualified low-income households.

Partnership 1 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)(1)).
2. The buildings in the Project were not previously placed in service by Partnership 1, 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 1 as of the time the Project was last placed in service.
3. 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 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 institution (as defined in section 42(d)(6)(D) of the Code).
4. Partnership 1 has submitted a letter from Agency 1, dated t6, stating that Agency 1, as receiver for Association, contracted to sell the Project to Corp N on t3.
5. To the best of the knowledge of Partnership 1 and its representatives, there have been no nonqualified substantial improvements to the buildings in the Project since they were last placed in service.
6. To the best of the knowledge of Partnership 1 and its 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 Partnership 1 asks that this requirement be waived under the authority granted the Secretary of the Treasury by section 42(d)(6)(A).
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.

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 additional clarification of the placed in service date, section 42(d)(2)(D)(ii)(IV) of the Code provides a 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 Agency 1 as receiver for Association, t2, and the date of sale to Partnership 1, t4 exceeds one year. Therefore, in accordance with the above limitation, the foreclosure date is a new placed in service date for the Project.

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 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 Partnership 1 and the fact that it acquired the Project from Agency 1, as receiver 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 Partnership 1's acquisition of the Project.

No opinion is expressed or implied regarding whether Partnership 1'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 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. A copy of this letter should be filed with the federal income tax returns for the Partnership and the respective partners 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)