

Private Letter Ruling 9336008, IRC Section 42

10-YEAR HOLDING PERIOD WAIVED.

A partnership acquired a low-income housing project from a bank undergoing liquidation and received a carryover allocation of a set amount of tax credit authority from the appropriate state agency. The partnership intends to rehabilitate the project and place it in service. According to the partnership, the project was acquired by purchase, as defined in section 179(d)(2), and the project was not previously placed in service by the partnership or a related party.

The Service has waived the 10-year holding period requirement under section 42(d)(2)(B)(ii) regarding the partnership's acquisition of the project.

Full Text:

Date: June 4, 1993

Dear ***

This letter responds to a letter of December 28, 1992, and subsequent correspondence submitted by and 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 with respect to the acquisition of the Project from an insured financial institution in default under the exception prided in section 42(d)(6)(D).

Partnership 1 has made the following representations.

Partnership 1 is a State P limited partnership with Corp L and Corp M as the general partners and Partnership 2 as the sole limited partner. Corp L and Corp M hold h and i percent partnership interests in Partnership 1, respectively, while Partnership 2 holds the remaining j percent partnership interest. Partnership 1 was formed for the purpose of acquiring, rehabilitating, owning and operating the Project as low and moderate-income housing. The Project and Partnership 1 were sponsored by Agency 2, a State P charitable corporation exempt from federal income taxes under section 501(c)(3) of the Code. Agency 2 also formed Corp L and Corp M to act as general partners of Partnership 1. Partnership 1 is under the examination jurisdiction of the District Director in City O.

The Project consists of b apartment units housed in c buildings, located on scattered sites in the Neighborhood of City N.

The buildings in the Project were owned by a developer planning large-scale conversions to condominiums. When the market softened, the owner tried to sell his holdings. Subsequently, Bank 1 through its wholly-owned subsidiary, Corp K, became owner of the buildings through foreclosure in the summer of t1, the most recent placed in service

date for the buildings in the Project. In t2, Bank 1 attempted unsuccessfully to sell some of the foreclosed properties at public auction. Bank 1 then entered into an option with Agency 2 which led to an agreement that the properties would be sold to a partnership organized by Agency 2 for the purpose of providing affordable low and moderate income housing. Before the transaction could be completed, however, Bank 1 failed, and on t3, Agency 4 declared Bank 1 insolvent and appointed Agency 1 as the receiver of Bank 1.

Bank 4 was named assignee of Agency 1 as receiver for Bank 1 and, as such, acquired all of the stock of Corp K under the terms of a Purchase and Assumption Agreement dated as of t3. On tx, Agency 1 dissolved Bank 4 and was appointed receiver of Bank 4 by Agency 4 on t5. Therefore, Agency 1, as receiver, has succeeded to all rights, title and interests of Bank 4 in Corp K including all stock thereof. Also, on t5, Agency 1 determined that it was necessary to appoint a representative to act in its behalf in connection with the maintenance and liquidation of the assets of Bank 4 and Corp K. Consequently, Corp J was duly appointed as attorney-in-fact to execute and deliver documents as representative of Agency 1. On t8, Corp 3 submitted a notarized statement (Certificate) supporting the above facts.

Partnership 1 acquired the Project on t6 from Corp K in care of Corp J, the representative of Agency 1, for a total cash consideration of \$d.

The Project is financed and subsidized with various state federal and private resources including: an advance by Bank 2; ax below market interest rate loan from Bank 3; a subsidized loan from the Fund, a local nonprofit development fund; several grants from various State P programs; and partnership equity raised from the syndication of limited partnership interests.

Partnership 1 has received a carryover allocation of t7 tax credit authority in the amount of \$e from Agency 3. Of that amount, Partnership 1 expects to spend \$f to rehabilitate the units in the Project, and the remaining balance of \$g will be applied toward the acquisition.

Partnership 1 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 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. Partnership 1 has obtained a Power of Attorney from Agency 1, dated t5 stating that it is the receiver for Bank 4 and is appointing Corp J to act in its behalf in connection with the maintenance and liquidation of assets acquired from Bank 4;

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 the subsidiary of an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act (Act)), or from a receiver or conservator of such institution (as defined in section 42(d)(6)(D));
5. To the best of knowledge of Partnership 1 and its representatives, as of the time of acquisition of the Project, Corp K owned the buildings free and clear of any debt or mortgage;
6. To the best of the knowledge of Partnership 1 and Partnership 1's representatives, there have been no nonqualified substantial improvements to the buildings in the Project since it was last placed in service;
7. To the best of the knowledge of Partnership 1 and the Partnership 1's representatives, no prior owner of the Project was allowed a low-income housing tax credit under section 42 of the Code for the Project;
8. All terms and conditions of section 42 and related sections of the Code, including substantial rehabilitation of a minimum of \$3,000 per apartment unit, will be met, 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)(D);
9. 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
10. This application for the waiver is being timely filed after a binding contract has been entered into for 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 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, the Power of Attorney dated t5 from Agency 1, and the Certificate dated t8 from Corp J, we rule that the 10-year holding period requirement under section 42(d)(2)(B)(ii) of the Code 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.

Sincerely yours,

James F. Ranson

Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs & Special Industries)