Private Letter Ruling 9336035, IRC Section 42

10-year Holding Period Waived.

Full Text:

Date: June 15, 1993

CC:DOM:P&SI:5 - TR-31-0943-93

Dear ***

This letter responds to your letter dated February 25, 1993, submitted on behalf of the Owner, 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 Owner has made the following representations.

The Owner resides in State P and is under the examination jurisdiction of the District Director in City M.

The Project consists of b apartment units housed in c buildings, located in the Targeted Area of City N. The buildings were last placed in service on t1, the date the Bank foreclosed on the Project. The Bank went into conservatorship on t2 and into receivership on t3. The Bank is an insured depository institution in default as defined in section 3 of the Federal Deposit Insurance Act (Act).

On t4, the Owner entered into a binding contract to acquire the Project from Agency 1 and on t5, the Owner acquired the project from Agency 1, the receiver for the Bank. In order to acquire the Project, the Owner made a cash payment of $d, assumed a new note of $e and exchanged like kind property under the nonrecognition of gain provisions of section 1031 of the Code.

The Owner represents that it acquired the project for the purpose of providing affordable housing to qualified, low-income households and has received a t6 low-income housing credit dollar amount allocation of $g from Agency 2. The allocation includes the 33-percent present value tax credit on the eligible basis of the acquisition costs for the buildings, and the 70-percent present value tax credit on new rehabilitation costs. The housing tax credits were approved by Agency 2 through a carryover allocation issued on t7. The Owner estimates that rehabilitation costs will approximate $h per apartment unit for each building.

On t8, L, an attorney from Agency 1's National Office, submitted a letter to this office stating that Agency 1 was the receiver for the Bank.

The Owner 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 Owner, 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 Owner 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 Act), or from a receiver or conservator of such institution (as defined in section 42(d)(6)(D));

4. To the best of the knowledge of the Owner and the Owner's representatives, there have been no nonqualified substantial improvements to the buildings in the Project since they were last placed in service;

5. To the best of the knowledge of the Owner and the Owner's representative, no prior owner of the Project was allowed a low- income housing tax credit under section 42 of the Code for the Project;

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

7. Section 42(d)(2)(C) of the Code provides a limitation on the eligible basis of existing buildings. It states that the adjusted basis for any low-income housing credit building shall not include so much of the basis of such building as is determined by reference to the basis of other property held at any time by the person acquiring the building. In this case a portion of the consideration for the Project was a section 1031 exchange involving nonrecognition of any gain or loss. In calculating the qualifying eligible basis of the acquisition costs. The Owner has appropriately made reductions of $i for the deferred gain, $j for the prior basis of the asset exchanged, and $k for land cost from the total acquisition cost, $f;

8. The date of purchase of the Project will be 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

9. The 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 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 the Owner's representations, and the letter dated t8 from L stating that Agency 1 is receiver for the Bank, 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)(ii) of the Code is waived with respect to the Owner's acquisition of the Project.

No opinion is expressed or implied regarding whether the Owner'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 of 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, 1933-1 I.R.B. 19, 30. 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 Owner's federal income tax return for the taxable year in which the transaction covered by this ruling is consummated.

Sincerely yours,

James Ranson

Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs & Special Industries)