

Private Letter Ruling 9348006, IRC Section 42

Waiver of 10-year holding period requirement.

Full Text:

Date: August 25, 1993

Dear ***

This ruling letter responds to your letter dated May 27, 1993, and subsequent correspondence 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 authority of the exception for the acquisition of certain federally- assisted buildings provided in section 42(d)(6)(A)(i).

Partnership 1 was organized as a State A limited partnership, with M and Corp N as the general partners with b percent and c percent general partnership interests, respectively. The limited partners are M, with a d percent partnership interest, Corp N with a e percent partnership interest, and O, with a f percent partnership interest.

The Project was constructed and originally placed in service on t1. On that date federal assistance was provided to the prior owner (Partnership 2) by a loan of \$g from the Farmers' Home Administration (FmHA) under the authority of section 515 of the Housing Act of 1949. On t2, without the required approval of the FmHA a warranty deed was executed transferring the Property to P, a general partner in Partnership 2. On t3, again without the approval of the FmHA, a warranty deed was executed transferring the Property to Q, a limited partner in Partnership 2. The existence of these subsequent transfers is the cause for this request for the waiver.

The Project consists of h apartment units housed in i buildings situated on a parcel of land in City R. The units are all two bedroom and one bath apartments and are approximately j square feet in size. The buildings are of a two-story brick veneer construction with asphalt shingle roofing and each building contains k units. You represent that the Project has a history of financial distress and that the mortgage is currently in default. FmHA has stopped short of foreclosure as the result of an agreement by Partnership 1 to acquire the Project from Partnership 2, the prior owner.

Partnership 1 entered into a binding contract to acquire the Project from Partnership 2 and its partners, P and Q, on t4. The consideration to be paid is \$10.00 and the agreement to assume the outstanding mortgage with FmHA of approximately \$1. In addition the FmHA has agreed to provide a subsequent loan to Partnership 1 of \$m, for the purpose of completing repairs that are necessary for the continued operation of the Project. Partnership 1 represents that it plans to expend the \$m to rehabilitate the Project, or approximately \$n per apartment unit.

Since the interval between t3 and t4 is less than 10 years, Partnership 1 fails to meet the holding period requirement of section 42(d)(2)(B)(ii) of the Code for existing buildings. As federal funds are at risk, Partnership 1 has submitted this request for a waiver of the holding period requirement under the authority of the exception granted by section 42(d)(6)(A)(i).

In a letter dated t5, Partnership 1 has been informed that the Project is a "troubled project" by the Multiple Family Housing Servicing and Property Management Division of the National Office of the FmHA. A copy of this letter is attached to the request for this letter ruling.

Partnership 1 has made the following representations and certifications with respect to the Project.

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

(2) Partnership 1 acquired the buildings in the Project for the purpose of providing affordable housing to qualified low- income households;

(3) 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)(a)(iii)(II) of the Code) with respect to Partnership 1 at the time the buildings were last placed in service;

(4) As of t5, the buildings in the Project were "federally- assisted buildings" as defined in sections 42(d)(6)(B)(iii) of the Code and 1.42-2(c)(1) of the Income Tax Regulations;

(5) As of t5, 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) To the best of the knowledge of Partnership 1 and its representatives, no prior owner of the Project was allowed a low-income housing 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 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). Partnership 1 asks that this requirement be waived under the authority granted the Secretary of the Treasury by section 42(d)(6)(A)(i);

(9) This application for the waiver is timely filed as it is 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 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 the FmHA.

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 (i) section 8 of the United States Housing Act of 1937, (ii) section 221(d)(3) or 236 of the National Housing Act, or (iii) section 515 of the Housing Act of 1949, as such Acts are in effect on the date of enactment of 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)(i) of the Code. You have represented that Partnership 1 is in compliance with these requirements.

Based on the above facts and Partnership 1'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). Therefore, we rule as follows:

The 10-year holding period requirement of 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 Partnership 1, 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 federal income tax return for Partnership 1 and the respective partners for the taxable year in which the transaction covered by this ruling is consummated.

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

Sincerely yours,

James F. Ranson

Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)