

Private Letter Ruling 9404011, IRC Section 42

Waiver of 10-year holding period requirement.

Full Text:

Date: October 25, 1993

LEGEND:

Partnership = ***

Association = ***

Agency 1 = ***

Agency 2 = ***

Borrowers = ***

Project = ***

State A = ***

B = ***

State C = ***

Corp M = ***

Corp N = ***

City P = ***

Corp Q = ***

City R = ***

City S = ***

b = ***

c = ***

d = ***

e = ***

f = ***

g = ***

h = ***

t1 = ***

t2 = ***

t3 = ***

t4 = ***

t5 = ***

t6 = ***

t7 = ***

t8 = ***

Dear ***

This responds to a letter dated September 23, 1993, submitted on behalf of Partnership, 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 is a State A limited partnership with Corp M and Corp N as general partners, with b percent and c percent partnership interests, respectively, and individual B as the limited partner with the remaining d percent interest. Corp M and Corp N are under the examination jurisdiction of the City R District Director. B is under the examination jurisdiction of the District Director in City S. Partnership represents that it has acquired the Project for the purpose of providing affordable rental housing to low-income households.

The Project consists of e buildings housing f apartment units located on a h acre parcel of land in City P. Partnership represents that the buildings were placed in service in two phases in t1 and t2 and none of the buildings have undergone a substantial nonqualified rehabilitation.

The project was previously financed by a mortgage from the prior owners (the Borrowers) to a State C savings and loan association (Association). Subsequently, the Borrowers defaulted on the mortgage payments and, on t3, Association foreclosed on the project.

On t4 Agency 1 was appointed as receiver for Association, an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act). Included in this receivership was the Project.

On t5, Corp Q, a corporation fully controlled by B, entered into a contract to acquire the Project from Agency 1, acting as receiver for Association, for a consideration of \$g. A copy of the purchase contract between Agency 1 and Corp Q was submitted with the ruling request. On t6, Corp Q assigned the contract to Partnership and, on t7, Partnership purchased the Project from Agency 1 for the \$g consideration.

In order to comply with the state limitations of the credit allocable under section 42(h) of the Code, Partnership has applied for an allocation of the low-income housing credit dollar amounts from Agency 2 of State A. Partnership further represents that the estimated rehabilitation cost for the Project exceeds the minimum rehabilitation expenditure requirement of section 42(e)(3)(A) of the Code.

Partnership 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 buildings in the Project were not previously placed in service by 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 Partnership as of the time the Project was last placed in service.

3. Partnership has obtained a letter from Agency 1, dated t8, stating that Agency 1 was the receiver for Association.

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 an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act), or from a receiver of [sic] conservator of such institution (as defined in section 42(d)(6)(D) of the Code).

5. To the best of the knowledge of Partnership and its representatives, there have been no nonqualified substantial improvements to the Project since it was last placed in service.

6. To the best of the knowledge of Partnership 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 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 13, 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.

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 Association, t3, and the date of sale to Partnership, t7 exceeds one year. Therefore, in accordance with the limitations provided in section 42(d)(2)(D)(ii)(IV), the foreclosure date is a new placed in service date for the Project. Based on this fact, Partnership's purchase of the Project has failed the 10-year holding period requirement of section 42(d)(2)(B)(ii) of the Code. This failure is the basis for this request for a waiver of the 10-year holding period requirement.

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 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's acquisition of the Project.

No opinion is expressed or implied regarding whether 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 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, 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 federal income tax returns for 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)