

Private Letter Ruling 9407017, IRC Section 42

Full Text:

Date: November 18, 1993

Dear ***

This letter ruling responds to your letter of Sept. 23, 1993, and subsequent correspondence, submitted on behalf of the Partnership, requesting a private letter ruling that will waive the 10-year holding period requirement of section 42(d)(2)(B)(ii) of the Internal Revenue Code with respect to the buildings in the Project under the authority of the exception provided in section 42(d)(6)(A)(i) for the acquisition of certain federally-assisted buildings.

The Partnership has made the following representations.

The Partnership and the Seller are State M limited partnerships. K is the sole general partner of the Partnership and is a limited partner of the Seller. Both the Partnership and the Seller are under the examination jurisdiction of the District Director in City O.

The Project, which is located in City N, consists of b buildings containing a total of c apartment units. The Seller originally placed the Project in service on t1, and has kept it in service until the present time. However, the Seller has not made any improvements to the Project since its original construction.

The Seller received an original mortgage loan of \$d from the Farmers Home Administration (the FmHA) under the Section 515 program. However, the Seller as mortgagor has not complied with terms of the loan and is currently in non-monetary default. Consequently, the FmHA has classified the loan as being a problem loan, but the FmHA has stopped short of foreclosure action pending consummation of the proposed transfer of the Project to the Partnership.

On t2, the Partnership entered into a sales contract with the Seller and agreed to acquire the Project. The terms of the acquisition include a payment of \$d to the Seller and the assumption by the partnership of an outstanding balance owed to the FmHA not to exceed the current "as is" appraisal value of \$e as determined by the FmHA. This transfer of the Project to the Partnership has been approved by the FmHA. In addition, the FmHA has approved a subsequent loan to the Partnership in the amount of \$f for the purpose of completing repairs that are necessary for the continued operation of the Project. The rehabilitation expenditures will therefore be greater than \$g per apartment unit.

Because there was not a period of at least 10 years between the Partnership's acquisition of the Project and the date it was last placed in service, the Project does not comply with the 10 year holding period requirement under section 42(d)(2)(B)(ii) of the Code.

In a letter dated t3, included with the ruling request, the Internal Revenue Service has been informed that the Project has been designated a "troubled project" by the National Office of the Multiple Family Housing Servicing and Property Management Division of the FmHA.

The 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 under 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 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 the Partnership at the time the buildings were last placed in service;
- (3) As of the time of application for the ruling the buildings 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;
- (4) As of the time of application for the waiver, the balance of the outstanding mortgage held by the FmHA was approximately \$h. The FmHA is the mortgagee and the Seller is the mortgagor;
- (5) There have been no nonqualified substantial improvements to the buildings since they were last placed in service;
- (6) No prior owner of the buildings was allowed a low-income housing credit under section 42 of the Code for the buildings; and
- (7) The apartment units in the buildings are to be rehabilitated in a manner that satisfies the requirements of sections 42(d)(2)(B)(iv) and 42(e) of the Code.

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 allowable. 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)(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 the such building is a part) to the Department of Housing and Urban Development or to the Farmers' Home Administration.

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 section 8 of the United States Housing Act of 1937, section 221(d)(3) or 236 of the National Housing Act of 1934, or section 515 of the Housing Act of 1949, as such Acts are in effect on the date of enactment date of the 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) of the Code. You have represented that the Partnership is in compliance with these requirements.

Based on the above facts and the Partnership'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). In addition, the requirements of section 1.42-2 of the regulations have been satisfied.

Based on the above facts and representations as submitted we rule as follows:

The 10-year holding period requirement under section 42(d)(2)(B)(ii) of the Code is waived with respect to the Partnership's acquisition of the Project.

No opinion is expressed or implied regarding whether the 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 Partnership, 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 income tax return of the Partnership 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 requests.

Sincerely yours,

James F. Ranson

Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)

