

Private Letter Ruling 9408010, IRC Section 42

Full Text:

Date: November 22, 1993

Dear ***

This letter responds to your letter of October 29, 1993, and subsequent correspondence submitted on behalf of the 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. Specifically, the ruling request seeks a waiver of the 10-year holding period requirement under the exception in section 42(d)(6)(D) for buildings acquired from an insured depository institution in default or from a receiver or conservator of the institution.

The Partnership has made the following representations.

The Partnership, with J, K, the Company and Corp 2 as the general partners and the Company as the limited partner, was formed as a State L limited partnership for the purpose of acquiring, owning, and operating the Project. The respective partnership interest owned by each owner in the Partnership is as follows:

Partner Percent Interest (%)

J e

K e

Corp 2 e

Company f

The City P District Office of the Internal Revenue has examination jurisdiction over the Partnership's federal income tax returns.

The Project consists of b apartment units housed in c buildings plus a laundry, office, and maintenance building located on d acres located in City Q. The Project was acquired and last placed in service by Corp 1, a State M corporation, on t1. There have been no nonqualified substantial improvements to the Project, as defined in section 42(d)(2)(D) of the Code, since t1

The Project is owned by Corp 1, a State M corporation, that was, prior to t2, a wholly owned subsidiary of the Bank, a State M chartered savings bank in City N. However, on

t4, Agency 1 was appointed as liquidating agent (receiver) for Corp 1. Consequently, Agency 1 is currently the sole stockholder of Corp 1.

On t3, Corp 2, one of the general partners of the Partnership, executed a purchase and sale agreement (Purchase Agreement) with Agency 1 for the purchase of the Project for a price of \$j. On t4, Corp 2 assigned all of its rights under the purchase agreement to the Partnership. As a result of amendments to the Purchase Agreement, the closing date for the acquisition of the Project has been extended until t6.

The total cost of acquisition and rehabilitation of the Project is expected to be \$g. The costs will be funded by a \$h loan from Agency 2 of proceeds received from the issuance of bonds which are tax exempt under section 103 of the Code. The remaining \$i of the costs will be funded with Capital Contributions of existing partners and additional capital that is expected to be raised through the syndication of the Project and the low-income housing tax credit through the sale of interests in the Partnership. Since the financing for the Project will satisfy the requirements of section 42(h)(4)(B) of the Code, it is not necessary for the Project to obtain an allocation of housing credit dollar amounts from Agency 2 under State L's annual ceiling.

In connection with this request for a waiver, the Partnership makes the following representations and certifications with respect to the Project:

1. The acquisition of the Project will be by purchase (as defined in section 179(d)(2) of the Code, as applicable under section 42(d)(2)(D)(iii)(I) of the Code;
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) to the Partnership 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 the subsidiary of 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 institution (as defined in section 42(d)(6)(D));
4. To the best of the knowledge of the Partnership and its representatives, as of the time of acquisition of the Project, the buildings will be free and clear of any debt or mortgage;
5. To the best of the knowledge of the Partnership and the Partnership's representatives, there have been no nonqualified substantial improvements to the buildings in the Project since it was last placed in service;
6. To the best of the knowledge of the Partnership and the Partnership'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;

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

8. 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

9. This application for the waiver is being timely filed after a binding contract has been entered into for the acquisition of the Project.

On t5, G, a representative of Agency 1, submitted a letter to this office indicating that on t4 Agency 1 was appointed liquidating agent (receiver) of the Bank.

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.

Based upon the representations of the Partnership and the letter dated t5 from Agency 1 stating that Agency 1 is the receiver of 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) is waived with respect to the Partnership's acquisition of the Project.

No opinion is expressed or implied regarding whether the costs of acquisition and rehabilitation of the buildings in the Project will otherwise qualify 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 and Special Industries)