Private Letter Ruling 9425005, IRC Section 42

The Service has waived the 10-year holding period requirement under section 42(d)(2)(B)(ii) for a partnership's acquisition of apartments it intends to rehabilitate to provide affordable housing to qualified low-income households. The partnership will acquire the project from a receiver of an insured depository institution in default under section 42(d)(6)(D).

Full Text:

Date: March 17, 1994

Dear ***

This letter responds to your letter of January 20, 1994, 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 with respect to the acquisition of the Project from an insured financial institution in default or receiver or conservator thereof under the exception provided in section 42(d)(6)(D).

The Partnership has made the following representations.

The Partnership is a State Q limited partnership with Corp L as the general partner. The Partnership is under the examination jurisdiction of the District Director in City O.

The Project consists of b apartment units housed in c buildings, located in City N. On t1, Agency 1 became the receiver for the Association and owner of the Project.

On t2, Corp L, the general partner of the Partnership, acquired the Project on behalf of the Partnership from Agency 1 for $d, consisting of $e financing from Agency 1 and a cash payment of $f. The Partnership represents that it acquired the Project for the purpose of providing affordable housing to qualified, low-income households, and on t3, applied to Agency 2 for a t4 allocation of housing credit dollar amount under section 42(h). That application requested the 30-percent present value tax credit on the eligible basis of the acquisition costs, and the 70-percent present value tax credit on new rehabilitation costs. The Partnership estimates that rehabilitation costs will be $g or $h per apartment unit for each building.

On t5, R, an attorney from Agency 1's National Office, submitted a letter to this office stating that Agency 1 is the receiver for the Association, an institution in default as defined in section 3 of the Federal Deposit Insurance Act (Act).

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 in section 179(d)(2), 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)) with respect to the Partnership as of the time the Project was last placed in service;

3. The Partnership has obtained a letter from Agency 1 dated t5 stating that it is the receiver for the 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 Act), or from a receiver or conservator of such an institution (as defined in section 42(d)(6)(D));

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 they were 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 for the Project;

7. All terms and conditions of section 42 and related sections, 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); and

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).

Section 42(d) 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) 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 Partnership's representations, and the letter dated t5 from Agency 1 that the Partnership will acquire the Project from a receiver of an insured depository institution in default under section 42(d)(6)(D), 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 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.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) 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. 94-1, 1994-1 I.R.B. 10, 39. However, when the criteria in section 11.05 of Rev. Proc. 94-1 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 the Partnership and the respective partners 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)