Private Letter Ruling 9432013, 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 three housing projects it intends to rehabilitate to provide affordable housing to qualified low-income households. The partnership will acquire the projects from a receiver of an insured depository institution in default under section 42(d)(6)(D).

Date: May 11, 1994

Dear ***

This responds to your letter dated January 19, 1994, and subsequent correspondence submitted on behalf of Partnership, requesting a private letter ruling that will waive, for the Projects (Project I, Project II, and Project III), 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 as the general partner and individuals B, C, and D as the limited partners. Partnership was formed under State A law by filing a certificate of limited partnership with the Secretary of State A on t12. Partnership is under the examination jurisdiction of the District Director in City E. Partnership was formed for the purpose of acquiring, rehabilitating, and operating low-income housing projects that are the subject of this ruling request.

PROJECT I:

Project I consists of b buildings housing c apartment units located on an approximately d acre parcel of land in City F.

Project I was previously financed by a mortgage from the former owners (Borrowers 1) to a State A savings and loan association (Association 1).

On t1, Agency 1 was appointed as conservator and, on t2, was appointed as receiver for Association 1, an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act). Included in this conservatorship was Project I. Subsequently, Borrowers 1 defaulted on the mortgage payments and, on t3, Agency 1, as conservator for Association 1, foreclosed on Project I.

On t4, Partnership purchased Project I from Agency 1, acting as receiver for Association, for a total consideration of $e. Of this amount, $f was paid in cash, at the closing, and $q was financed by a purchase money mortgage with Agency 1. As evidence of these transactions a copy of the warranty deed and of the real estate note with Agency 1 was submitted with the request for ruling.

In order to comply with the state limitations of the credit allowable under section 42(h), Partnership has applied for and, on t5, received an allocation of the t6 year low-income housing credit dollar amounts from Agency 2 of State A in the amount of $h per year for Project I.

Partnership states that the estimated rehabilitation cost for Project I is $i, or $j per unit, and thereby exceeds the minimum rehabilitation expenditure requirement of section 42(e)(3)(A).

Project II:

Project II consists of k buildings housing l apartment units located on a m acre parcel of land in City G.

Project II was previously financed by a mortgage from the former owners (Borrowers 2) to a savings and loan association (Association 2). Subsequently, Borrowers 2 defaulted on the mortgage payments and, on t10, Association 2 foreclosed on Project II.

On t7, Agency 1 was appointed as conservator and, on t8, it was appointed as receiver for Association 2, an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act). Included in this conservatorship and receivership was Project II.

On t9, Partnership purchased Project II from Agency 1, acting as receiver for Association 2, for a total consideration of $n. Of this amount, $0 was paid in cash at closing, and p was financed by a purchase money mortgage with Agency 1. As evidence of these transactions a copy of the warranty deed and of the real estate note with Agency 1 was submitted with the ruling request.

In order to comply with the state limitations of the credit allowable under section 42(h), Partnership has applied for and, on t5, received an allocation of the t6 year low- income housing credit dollar amounts from Agency 2 of State A in the amount of $q per year for Project II.

Project III:

Project III consists of r buildings housing s apartment units located on a parcel of land in City G.

Project III was previously financed by a mortgage from the former owners (Borrowers 3) to a savings and loan association (Association 2). Subsequently, Borrowers 3 defaulted on the mortgage payments and, on t11, Association 2 foreclosed on Project III.

On t7, Agency 1 was appointed as conservator, and, on t8, it was appointed as receiver for Association 2, an insured depository institution in default (as defined in section 3 of

the Federal Deposit Insurance Act). Included in this conservatorship and receivership was Project III.

On t9, Partnership also purchased Project III from Agency 1, acting as receiver for Association 2, for a total consideration of $n. Of this amount, $0 was paid in cash at closing, and p was financed by a purchase money mortgage with Agency 1. As evidence of these transactions a copy of the warranty deed and of the real estate note with Agency 1 was submitted with the ruling request.

In order to comply with the state limitations of the credit allowable under section 42(h), Partnership has applied for and, on t5, received an allocation of the t6 year low-income housing credit dollar amounts from Agency 2 of State A in the amount of $t per year for Project III.

Partnership has made the following additional representations and certifications with respect to the above projects:

1. The acquisition of the Projects, are 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 Projects 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 Projects were last placed in service.

3. Partnership has obtained letters from Agency 1, dated t4, stating that Agency 1 was the conservator and, subsequently, the receiver for Association 1 and Association 2. Copies of these letters were attached to the request for ruling.

4. As of the earlier of the time of acquisition of the Projects or the time of the application for the waiver, the Projects are 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 conservator of such institution (as defined in section 42(d)(6)(D)).

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

6. To the best of the knowledge of Partnership and its representatives, no prior owner of the Projects, was allowed a low- income housing tax credit under section 42 for the Projects.

7. All terms and conditions of section 42 and related sections of the Code will be met, including substantial rehabilitation expenditures in excess of the minimum requirements provided by section 42(e)(3), except for the 10-year holding period requirement provided by section 42(d)(2)(B)(ii). 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 Projects was after the date of enactment of the Revenue Reconciliation Act of 1989, (December l9, 1989) and, therefore, the purchase complies with the effective date of section 42(d)(6)(D).

9. This application for the waiver is being timely filed within 12 months after the acquisition of the Projects.

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 Agency I (for Project I) or Association 2 (for Project II and Project III), and the date of sale to Partnership, t9 for all of the Projects, 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 each project. Based on this fact, Partnership's purchase of each of the above projects failed the 10-year holding period requirement of section 42(d)(2)(B)(ii). This failure is the basis for this request for waivers of the 10-year holding period requirement.

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 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 Projects from Agency 1 as conservator or receiver of an insured depository institution in default, under the authority of section 42(d)(6)(D), 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 Projects.

No opinion is expressed or implied regarding whether Partnership's costs of acquisition and rehabilitation of the buildings in the Projects 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) 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. 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 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)