

Private Letter Ruling 9435040, IRC Section 42

The Service has waived the 10-year holding period requirement of section 42(d)(2)(B)(ii) in connection with a partnership's acquisition of a low-income housing project. The Service determined that the buildings in the project were federally assisted buildings for purposes of section 42(d)(6)(B)(iii), and that federal funds were at risk under section 42(d)(6)(A)(i).

Full Text:

Date: June 7, 1994

Dear ***

This ruling letter responds to your letter dated April 15, 1994, and subsequent correspondence 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 authority of the exception for the acquisition of certain federally- assisted buildings provided in section 42(d)(6)(A)(i).

Partnership was organized as a State A limited partnership for the purpose of acquiring, developing, owning and operating an apartment complex (the Project) located in City B. The general partner of Partnership is M, and Partnership is under the examination jurisdiction of the District Director in City C.

The Project consists of b residential apartment units housed in c buildings. There are d one bedroom apartment units, e two bedroom apartment units, f three bedroom apartment units, plus an office, laundry and maintenance storage area.

The Project was placed in service on t1 by the prior owner (Seller). Financing for the Project was provided by a loan from the Farmers Home Association (FmHA) under section 515 of the Housing Act of 1949.

On t2, Partnership acquired the Project from Seller by assuming the balance of a renegotiated mortgage with FmHA in the amount of \$g. Partnership is the mortgagor, and FmHA is the mortgagee.

Partnership represents that it has spent approximately \$h to rehabilitate the Project, or approximately \$i per apartment unit. The buildings in the Project were then placed in service by Partnership in t3.

Since the interval between t1 and t2 is less than 10 years, Partnership fails to meet the holding period requirement of section 42(d)(2)(B)(ii) for existing buildings. As federal funds are at risk, Partnership has submitted this request for a waiver of the holding period requirement under the authority of the exception granted by section 42(d)(6)(A)(i).

In a letter dated t4 the National Office of the Internal Revenue Service was informed that the Project is a "troubled project" by the Multiple Family Housing Servicing and Property Management Division of the National Office of the FmHA. A copy of this letter is attached to the request for this letter ruling.

Partnership has made the following representations and certifications with respect to the Project:

(1) The acquisition of the buildings in the Project is by purchase (as defined under section 179(d)(2) and as further restricted by section 42(d)(2)(D)(iii)(I));

(2) Partnership acquired the buildings in the Project for the purpose of providing affordable housing to qualified low- income households;

(3) 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)) with respect to Partnership at the time the buildings were last placed in service;

(4) As of t2, the buildings in the Project were "federally- assisted buildings" as defined in section 42(d)(6)(B)(iii) and section 1.42-2(c)(1) of the Income Tax Regulations;

(5) To the best of the knowledge of Partnership and its representatives, no prior owner of the Project was allowed a low-income housing credit under section 42 for the Project;

(6) All terms and conditions of section 42 and related sections, including substantial rehabilitation in conformance with the minimum expenditures required by section 42(e)(3), will be met 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)(i);

(7) This application for the waiver is timely filed as it is within 12 months after the acquisition of the Project.

For an existing building to qualify for the 30-percent present value tax credit, section 42(d)(2)(B)(ii) requires there be a period of at least 10 years between the date of the building's acquisition by the taxpayer and the later of:

1. The date the building was last placed in service, or
2. The date of most recent nonqualified substantial improvement of the building.

Section 42(d)(6)(A)(i) 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 such building is a part) to the Department of Housing and Urban Development or the FmHA.

Section 42(d)(6)(B) defines the term "federally-assisted building" as including any building that is substantially assisted, financed, or operated under (i) section 8 of the United States Housing Act of 1937, (ii) sections 221(d)(3) or 236 of the National Housing Act, or (iii) section 515 of the Housing Act of 1949, as such Acts are in effect on the date of enactment of 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)(i). You have represented that Partnership is in compliance with these requirements.

Based on the above facts and 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), and that federal funds are at risk under section 42(d)(6)(A)(i). Therefore, we rule as follows:

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.

This ruling is directed only to Partnership, which requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent. A copy of this letter should be filed with the federal income tax return for Partnership and the respective partners 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 request.

Sincerely yours,

JAMES F. RANSON

Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)

