

Private Letter Ruling 9440003, IRC Section 42

Date: June 30, 1994

Dear ***

This letter responds to your letter dated May 3, 1994, submitted on behalf of Owner 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 exception provided in section 42(d)(6)(D).

Owner is a State A nonprofit corporation with a Certificate of Authority to do business in State B. Owner represents that it has acquired the Project for the purpose of providing affordable rental housing to low-income households.

The Project consists of b buildings housing c apartment units located on a k acre parcel of land in City C. The Project was previously financed by a mortgage from the Prior Owner to Association. Subsequently, the Prior Owner defaulted on the mortgage payments and, on t1, Association repossessed the Project. As evidence of the repossession, Owner has submitted a copy of the substitute trustee's deed reconveying the Project to Association.

On t2, Owner states that Association went directly into receivership. On that date, Agency 1 was appointed receiver for Association, an insured depository institution in default (as defined in 53 of the Federal Deposit Insurance Act). On t3, Owner entered into a binding contract for the acquisition of the Project from Agency 1, acting as receiver for Association. On t4, Owner purchased the Project.

Consideration for the Project was \$d consisting of a cash payment of \$e and the assumption of \$f of debt. The sale of the Project to Owner is evidenced by the submission of the copies of the purchase contract and the special warranty deed transferring title to Owner.

In order to comply with the state housing credit limitations provided in section 42(h)(3), Owner applied for and received a t5 carryover housing credit dollar amount allocation of \$g per year from Agency 2. This allocation includes the 30-percent present value tax credit on the eligible basis of the acquisition costs (\$h per year), and the 70-percent present value tax credit on the new rehabilitation costs (\$i per year). The housing credit dollar amounts were approved by Agency 2 through a carryover allocation issued on t6. Owner estimates that rehabilitation costs will average \$j per apartment unit in each building and, therefore, exceed the minimum rehabilitation expenditures requirement of 542(e)(3)(A).

The Project currently has qualified low-income families that benefit from rent restricted rents as stated in the United States Department of Housing and Urban Development income tables. Owner represents that it is making good faith efforts to market the apartments to other qualified low-income households.

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

1. The acquisition of the buildings in the Project is by purchase (as defined in 5179(d)(2), as applicable under 542(d)(2)(D)(iii)(II)).
2. The buildings in the Project were not previously placed in service by Owner, or by a person who was related person (as defined in 542(d)(2)(D)(iii)(II)) with respect to Owner 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 an insured depository institution in default (as defined in 53 of the Federal Deposit Insurance Act), or from a receiver or conservator of such institution (as defined in 542(d)(6)(D)).
4. To the best of the knowledge of Owner and its representatives, there have been no nonqualified substantial improvements to the buildings in the Project since they were last placed in service.
5. To the best of the knowledge of Owner and its representative, no prior owner of the Project was allowed a low-income housing tax credit under section 42 for the Project.
6. All terms and conditions of section 42 and related sections of the Code will be met, including substantial rehabilitation of a minimum of \$3,000 per apartment unit, except for the 10-year holding period requirement provided by section 42(d)(2)(B)(ii), and Owner asks that this requirement be waived under the authority granted the Secretary of the Treasury by section 42(d)(6)(D).
7. The date of purchase of the Project was 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).
8. This application for the waiver is being timely filed within 12 months after the acquisition of the Project.

For an existing building to qualify for the 30-percent present value housing 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 the most recent nonqualified substantial improvement of the building.

As additional clarification of the placed in service date, section 42(d)(2)(D)(ii)(IV) 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 Association, t1, and the date of sale to Owner, t4, 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 the Project. Based on this fact Owner's purchase of the Project has failed the 10-year holding period requirement of section 42(d)(2)(B)(ii). This failure is the basis for this request for a waiver of the 10-year holding period requirement.

However, 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 Owner and the fact that Owner acquired the Project from Agency 1 as the receiver for 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 Owner's acquisition of the Project.

No opinion is expressed or implied regarding whether Owner'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) 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 511.04 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 Owner's federal income tax return 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)