

Private Letter Ruling 9544010, IRC Section 42

Date: July 31, 1995

Dear

This is in response to your letter of March 31, 1995, 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 exception provided in section 42(d)(6)(D).

Partnership is a State A limited partnership with Corp M as its general partner. Corp M, with a b percent partnership interest, is controlled by Corp N, a State A nonprofit corporation that fosters the development of low-income housing and that is exempt from federal income tax under section 501(c)(3). The limited partners will have a c percent partnership interest. Partnership is under the audit jurisdiction of the District Director in City C.

The project consists of a building housing d residential apartment units, located in City B.

A review of the prior history of the Project indicates its previous owner financed the properties through a mortgage with Bank. Subsequently, the mortgage went into default and, pursuant to a judgment dated t1, was foreclosed on by Bank. On t2, Agency 1 was appointed as receiver for Bank, an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act). On t3, Partnership purchased the Property from Agency 1 which was acting as receiver for Bank. Consideration for the acquisition was \$e.

Partnership applied for and received a t4 carryover allocation of the State A low-income housing tax credit dollar amount from the State A housing credit agency, Agency 2. This allocation includes the 30-percent present value tax credit on the eligible basis of the acquisition costs and the 70-percent present value tax credit on the estimated rehabilitation costs. The State A housing credit dollar amount was approved by Agency 2 through a carryover allocation issued on t5. A copy of the Agency 2 letter approving the allocation was submitted with this request for ruling.

Partnership represents it will rehabilitate the Project and meet the minimum rehabilitation expenditure requirements of section 42(e)(3)(A).

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 a further clarification of the placed in service date, section 42(d)(2)(D)(ii)(IV) provides an additional 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 Bank, t1, and the date of sale to Partnership t3, exceeds one year. Therefore, in accordance with the limitation 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 Partnership's purchase of the Project has failed the holding period requirement for property received in foreclosure.

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 building in the Project was 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 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 a conservator or receiver of an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act).
4. Partnership has obtained a letter from Agency 1, stating that Agency 1 was serving as the receiver and liquidating agent for Bank.
5. To the best of the knowledge of Partnership and its representatives, there have been no nonqualified substantial improvements to the building in the Project since it was last placed in service.
6. To the best of the knowledge of Partnership and its 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 of the Code will be met, including substantial rehabilitation in accordance with the minimum requirements of section 42(e)(3)(A), except for the 10-year holding period requirement provided by section 42(d)(2)(B)(ii), and 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 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).

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

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 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. The Project has failed this test and that is the basis for this request for ruling.

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 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 Project from Agency 1 as 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 Project.

No opinion is expressed or implied regarding whether Partnership's costs of acquisition and rehabilitation of the building in the Project will qualify otherwise for the low-income housing credit under section 42.

This ruling is directed only to Partnership who request 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. 95-1, 1995-1 I.R.B. 6, 41. However, when the criteria in section 11.05 of Rev. Proc. 95-1 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 return for Partnership 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)

