

Private Letter Ruling 9546031, IRC Section 42

Date: August 23, 1995

Dear ***

This ruling letter responds to your letter dated July 5, 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 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 purposes of acquiring developing, owning and operating an apartment complex (the Project). The general partner of Partnership is Corp M with a b percent partnership interest, and the limited partner is Corp N having a b percent partnership interest. Partnership represents that after the final acquisition of the Project the partnership interests may be reduced or sold. Partnership is under the audit jurisdiction of the District Director in City B.

The Project consists of d apartment units housed in e two-story residential buildings on a f acre site in City B. Each of the buildings are of a brick and vinyl siding construction. The Project was previously placed in service on t1, by the former owner (Seller), and there has been no nonqualified substantial improvements [sic] to the buildings in the Project since that time. Federal assistance for the Project was provided by a loan from the Department of Housing and Urban Development (HUD) under section 221(d)(3) of the National Housing Act. You represent that the Project has a history of financial distress and that the mortgage is currently in default. HUD has stopped short of foreclosure as the result of an agreement by Partnership to acquire the Project from Seller.

On t2, Corp M entered into a binding contract on behalf of Partnership to purchase the Project from Seller. Consideration was the assumption of the outstanding mortgage in the amount of \$g. Partnership further represents that it plans to expend approximately \$i to rehabilitate the Project or approximately \$j per apartment unit. This expenditure will exceed the minimum rehabilitation requirements of section 42(e)(3).

In accordance with the state low-income housing limitations provided by section 42(h), Partnership applied for and received a t4 carryover allocation of the low-income housing tax credit dollar amount from the State A housing credit agency (Agency). This allocation results in an estimated annual low-income housing credit allowance of \$h to Partnership.

Since the interval between t1 and t2 is less than 10 years, Partnership fails to meet the 10-year 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 t3, Corp M, the general partner of Partnership was informed that the Project is a "troubled project" by the National Office of HUD. A copy of the letter is included with 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) On t5, Partnership received a tentative commitment for an allocation of the low-income housing credit dollar amount from Agency in order that it be in compliance with the limitation of section 42(h);

(4) 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;

(5) As of t3, 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;

(6) As of t3, federal mortgage funds with respect to the Project were at risk within the meaning of section 1.42-2(c)(2);

(7) There have been no nonqualified substantial improvements to the buildings in the Project since they were last placed in service on t1;

(8) To the best of 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;

(9) All terms and conditions of section 42 and related sections, including substantial rehabilitation in excess of the minimum provided 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);

(10) 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 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 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 HUD or the Farmers Home Administration.

Section 42(d)(6)(B) defines the term "federally-assisted building" as including any building that is substantially assisted, finance [sic], 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 the 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)(ii), 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 Partnerships 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, [sic] 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 the 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 HUD in accordance with that agency's request.

Sincerely yours,

JAMES F. RANSO

Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)