

Private Letter Ruling 9602011, IRC Section 42

Date: October 4, 1995

Dear ***

[1] This is in response to your letter of August 9, 1995, and subsequent correspondence submitted on behalf of Partnership 1, requesting a private letter ruling that will waive for the acquisition of 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).

[2] Partnership 1 is a State A limited partnership with Corp M as its general partner with a b percent partnership interest. The limited partners are Partnership 2 through Partnership 9 with partnership interests of c, d, e, f, g, h, i, and j percents, respectively. Partnership 1 is under the audit jurisdiction of the District Director in City B.

[3] The project consists of k two-story apartment buildings housing 1 residential apartment units as well as an office clubhouse building located in City C.

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

[5] Partnership 1 applied for and, on t4, received a 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. A copy of the Agency 2 letter approving the allocation was submitted with this request for ruling.

[6] Partnership 1 represents it will expend an estimated \$n to rehabilitate the Project. This exceeds the minimum rehabilitation expenditure requirements of section 42(e)(3)(A).

[7] 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.

[8] 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 Association, t1, and the date of sale to Partnership 1, 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 1's purchase of the Project has failed the 10-year holding period requirement for property received in foreclosure.

[9] Partnership 1, 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 buildings in the Project were not previously placed in service by Partnership 1 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 1 has obtained a letter from Agency 1, stating that Agency 1 was serving as the receiver and liquidating agent for Association.
5. To the best of the knowledge of Partnership 1 and its representatives, there have been no nonqualified substantial improvements to the buildings in the Project since they were last placed in service.
6. To the best of the knowledge of Partnership 1 and its representatives, no prior owner 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 a 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 1 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).

[10] 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.

[11] 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.

[12] Based upon the representations of Partnership 1 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 1's acquisition of the Project.

[13] No opinion is expressed or implied regarding whether Partnership 1's costs of acquisition and rehabilitation of the building in the Project will qualify otherwise for the low-income housing credit under section 42.

[14] This ruling is directed only to Partnership 1 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 1 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)