

Private Letter Ruling 9609014, IRC Section 42

The Service has waived the 10-year holding period requirement of section 42(d)(2)(B)(ii) for a limited partnership's acquisition of a housing project it intends to rehabilitate to provide affordable housing to qualified low-income households.

Full Text:

This ruling letter responds to the letter dated August 31, 1995, and subsequent correspondence submitted on behalf of Partnership 1, 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 1 is a State A limited partnership. The general partner of Partnership 1 is Corp L, a State A corporation, with a d percent partnership interest. Since syndication, the limited partners are Partnership 2 with an e percent partnership interest and Corp M with an f percent partnership interest. Partnership 1 is subject to the examination jurisdiction of the District Director in City B.

The Project consists of b residential apartment units housed in c buildings located in City C. There are g buildings with h two-bedroom units and i buildings with g two-bedroom units. There is also a laundry room located in building number d. Amenities include a playground area on the site.

The Project was rehabilitated and placed in service in t1 by the former owner (Seller), also a State A limited partnership, and there have been no nonqualified substantial improvements to the buildings in the Project since that time. Federal assistance for the Project was provided by a loan from the Farmers Home Administration (FmHA), under section 515 of the Housing Act of 1949. As of t3, the outstanding principal on this mortgage was \$j.

You represent that the Project has a history of financial distress and that the mortgage is currently in default. The Rural Housing and Community Development Service (RHCDS) (formerly FmHA) of the United States Department of Agriculture has stopped short of foreclosure as the result of an agreement by Partnership 1 to acquire the Project from Seller.

On t2, N, the president of Corp L, entered into a binding contract to purchase the Project with O, the general partner of Seller, by assuming the balance of the mortgage with RHCDS in the amount of \$j as well as a cash payment of \$k resulting in a total consideration of \$1. Partnership 1 expects to acquire the Project on t4.

Partnership 1 represents that it plans to expend \$m to rehabilitate the Project, or approximately \$n per apartment unit. This amount exceeds the minimum rehabilitation expenditure requirements of section 42(e)(3).

Since the interval between t1 and t is less than 10 years, Partnership 1 fails to meet the 10-year folding period requirement of section 42(d)(2)(B)(ii) for existing buildings. As federal funds are at risk, Partnership 1 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 t6, the National Office of the Internal Revenue Service was informed that the Project is a "troubled project" by the National Office of the RHCDS. A copy of the letter is attached to the request for this letter ruling.

Partnership 1 has made the following representations and certifications with respect to 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:

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) section 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 contains requirements that must be satisfied to permit the waiver referred to in 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:

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

This ruling is directed only to Partnership 1 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 1 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 RHCDS in accordance with that Agency's request.