

Private Letter Ruling 9611004, IRC Section 42

UIL No. 0042.04-07

Headnote:

Reference(s): Code Sec. 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:

Date: December 6, 1995

CC:DOM:P&SI:5-TR-31-2487-95

LEGEND:

Partnership 1 = \*\*\*

Partnership 2 = \*\*\*

Seller = \*\*\*

Project = \*\*\*

Agency = \*\*\*

State A = \*\*\*

City B = \*\*\*

City C = \*\*\*

M = \*\*\*

N = \*\*\*

Corp O = \*\*\*

P = \*\*\*

Q = \*\*\*

b = \*\*\*

c = \*\*\*

d = \*\*\*

e = \*\*\*

f = \*\*\*

g = \*\*\*

h = \*\*\*

i = \*\*\*

j = \*\*\*

k = \*\*\*

l = \*\*\*

t1 = \*\*\*

t2 = \*\*\*

t3 = \*\*\*

t4 = \*\*\*

t5 = \*\*\*

t6 = \*\*\*

t7 = \*\*\*

t8 = \*\*\*

Dear \*\*\*

This ruling letter responds to your letter dated October 25, 1995, 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 was organized as a State A limited partnership for the purposes of acquiring, developing, owning and operating an apartment complex (the Project). Prior to the closing of the acquisition, Partnership 1 will be syndicated and the general partners of Partnership 1 will be M and N and each will own a b percent partnership interest. The limited partners will be Corp O and Partnership 2 with c and d percent partnership interests, respectively. Partnership 1 is under the audit jurisdiction of the District Director in City B.

The Project consists of e apartment units housed in f residential buildings in City C. The project was constructed by Seller in three phases beginning in t1, with the last phase being placed in service in t2. There have been no nonqualified substantial improvements to the buildings in the Project since that time. During construction, Seller was a State A partnership with P and Q as the partners. On t3, P acquired the entire partnership by a Sheriff's Bill of Sale. After the sheriff's sale, the Seller partnership was terminated, under the provisions of section 708(b)(1)(A), and P became the sole owner of the property.

Federal assistance for the Project was initially provided by a loan from the Farmers Home Administration (FmHA) under section 515 of the Housing Act of 1949. You represent that the Project has a history of financial distress and that the mortgage is currently in default. FmHA has stopped short of foreclosure as the result of an agreement by Partnership 1 to acquire the Project from Seller.

On t4, Partnership 1 entered into a binding contract to purchase the Project from Seller with an expected date of acquisition of t5. Consideration was the assumption of the outstanding mortgage, in the amount of \$g, as well as cash of \$h for a total price of \$i. Partnership 1 further represents that it plans to expend approximately \$j to rehabilitate the Project or approximately \$k 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 1 applied for and received a t6 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 \$l per year to Partnership 1.

Since the interval between when the Project was last placed in service (t3) and the expected date of acquisition (t5) is less than 10 years, Partnership 1 will fail 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 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 t7, the National Office of the Internal Revenue Service was informed that the Project is a "troubled project" by the National Office of the Rural Housing and Community Development Service (RHCDS), formerly FmHA.

Partnership 1 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 1 acquired the buildings in the Project for the purpose of providing affordable housing to qualified low-income households;

(3) On t8, Partnership 1 received a tentative commitment for an allocation of the low-income housing credit dollar amount from Agency in order that to be in compliance with the limitation of section 42(h);

(4) 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 1 at the time the buildings were last placed in service;

(5) As of t7, 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 t7, 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 t3;

(8) To the best of knowledge of Partnership 1 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 1 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, financed, 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 1 is in compliance with these requirements.

Based upon the above facts and Partnership 1's representations, we have determined that the buildings in the Project are federally-assisted buildings, within the meaning of 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:

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.

No opinion is expressed or implied regarding whether Partnership 1'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 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 RHCDS in accordance with that agency's request.

Sincerely yours,

JAMES F. RANSON

Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)