

Private Letter Ruling 9650025, IRC Section 42

The Service has waived the 10-year holding period for the low- income housing credit for a limited partnership's acquisition of an apartment complex it intends to rehabilitate to provide affordable housing to qualified low-income households.

Full Text:

Date: September 17, 1996

Dear ***

This ruling letter responds to your letter dated April 1, 1996, and supplemental information 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 on t9 as a State A limited partnership to acquire, develop, own, and operate a 100 percent low- income apartment complex, the Project and Apartment Complex S. Partnership consists of Corp M, as the general partner with a percent interest, and Corp N and O as the limited partners with a c and a l percent partnership interests, respectively. The general partners of O are T and his wholly owned Corp N.

The Project consists of d apartment units housed in e residential buildings located in City C. One of the buildings houses a laundry room. The Project was acquired and placed in service by Seller on t1. As of t1 Seller was a partnership with P as the general partner and P and Q as the limited partners. On t2, P and Q withdrew as the limited partners resulting in a technical termination of the partnership for federal tax purposes under the provisions of section 708(b)(1)(B) and were replaced by R as the limited partner with a f percent partnership interest. On t3, P and Q reacquired R's limited partnership interest and the partnership terminated. No waiver is requested for Apartment Complex S as 10 years have transpired since it was last placed in service.

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 was acquired by Corp M as the result of a servicing action by the Rural Economic and Community Development Service of the U.S. Department of Agriculture, to advert federal funds being at risk. The Rural Housing and Community Development Service (RHCDs) of the U.S. Department of Agriculture, formerly FmHA, has submitted a letter dated t7, to the Internal Revenue Service designating the project as a "troubled project" based on a history of financial distress and mortgage default.

On t4, U, who serves as president, of Corp M, entered into a binding contract to purchase the Project from Seller. On t5, the Partnership acquired the Project. Consideration for the Project 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 further represents that it plans to expend approximately \$j to rehabilitate the Project.

Under 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).

Since the interval between when the Project was last placed in service (t3) and the date of acquisition (t5) is less than 10 years, Partnership has failed 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).

Partnership has made the following representations and certifications concerning 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 to provide affordable housing to qualified low-income households;
- (3) On t8, Agency signed a tentative commitment for a t6 carryover allocation of the low-income housing credit dollar amount for Partnership to comply with the limitation of low-income housing credits to State A as required by 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)) to Partnership 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 for 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 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 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); and

(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). Upon application by the taxpayer, the Secretary may waive this requirement for 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 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 contains requirements that must be satisfied before the Secretary will grant the waiver referred to in section 42(d)(6)(A)(i). You have represented that Partnership is in compliance with these requirements.

Based upon 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)(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 for Partnership's acquisition of the Project.

No opinion is expressed or implied regarding whether Partnership'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 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 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 pursuant to that agency's request.

Sincerely yours,

BARBARA B. WALKER

Assistant to Branch Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)