

Private Letter Ruling 9709030, IRC Section 42

Date: November 29, 1996

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

Full Text:

Refer Reply to: CC:DOM:P&SI:5-PLR-248128-96

LEGEND:

Buyer = ***
Bank 1 = ***
Bank 2 = ***
Agency 1 = ***
Agency 2 = ***
Project = ***
Corp L = ***
Corp N = ***
City N = ***
District O = ***
State Q = ***
b = ***
d = ***
e = ***
f = ***
g = ***
h = ***
i = ***
t1 = ***
t2 = ***
t3 = ***
t4 = ***
t5 = = ***
t6 = ***
t7 = ***
t8 = ***

Dear ***

This letter responds to your letter of August 30, 1996, and subsequent correspondence submitted on behalf of the Buyer 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 for the acquisition of the Project from an insured financial institution in default or receiver or conservator thereof under the exception provided in section 42(d)(6)(D).

The Buyer has made the following representations.

The Buyer intends to form a State Q limited partnership with Corp L and Corp M each holding a b percent general partnership interest. The Buyer is under the examination jurisdiction of District O.

The Project consists of d apartment units housed in e buildings, located in City N. On t1, Agency 1, as the receiver for Bank 1, was deeded ownership of the Project by the prior owner.

On t2, the general partners on behalf of the Buyer entered into a contract to acquire the Project from Agency 1 for a consideration that was subsequently reduced to \$f. The Buyer expects to close on the Project on t6. On t3, the Buyer obtained a commitment from City N for a loan of \$h and on t4 approval from Bank 2 for a bridge loan of \$g. These loans will cover the cost of the Project and will also provide for additional expenses of the buyer. You represent that the bridge loan will be repaid with the proceeds of an issue of tax exempt bonds. You also represent that the Buyer will apply for a bond allocation and the low-income housing credit allocation under section 42(h)(4) from Agency 2 in t7 or t8.

The Buyer seeks to own and operate the Project as a rehabilitated residential property for low, moderate and mixed income residents. The Buyer estimates that rehabilitation costs will be \$i. The Buyer represents that this amount clearly exceeds the minimum expenditures required to qualify for the rehabilitation credit.

On t5, Agency 1 submitted a letter to the Service stating that Agency 1 is the receiver for Bank 1, an insolvent institution. A copy of this letter is included in this request for a ruling.

The Buyer has made the following additional representations and certifications concerning 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 the Buyer, or by a person who was a related person (as defined in section 42(d)(2)(D)(iii)(II)) with respect to the 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 receiver or conservator of an insured depository institution in default (as defined in section 3 of the Act);
4. To the best of the knowledge of the Buyer and the Buyer's representatives, there have been no nonqualified substantial improvements to the buildings in the Project since they were last placed in service;
5. To the best of the knowledge of the Buyer and the Buyer's representatives, no prior owner of the Project was allowed a low- income housing tax credit under section 42 for the Project;
6. To the best of the knowledge of the Buyer or the Buyer's representatives, Agency 1 has held sole title to the Project for more than one year;
7. All terms and conditions of section 42 and related sections, including substantial rehabilitation, will be met, except for the 10- year holding period requirement provided by section 42(d)(2)(B)(ii), and the Buyer asks that this requirement be waived under the authority granted the Secretary of the Treasury by section 42(d)(6)(D); and
8. The date of the purchase of the Project will be 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).

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 earned. 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.

Section 42(d)(6)(D) provides an exception to the 10-year holding period requirement of section 42(d)(2)(B)(ii). A waiver may be granted under section 42(d)(6)(A)(without regard to any clause thereof) for any building 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.

Based upon the Buyer's representations and the letter dated t5 from Agency 1 that the Buyer will acquire the Project from a receiver of an insured depository institution in default under section 42(d)(6)(D), we rule that the 10-year holding period requirement under section 42(d)(2)(B)(ii) is waived for the Partnership's acquisition of the Project.

No opinion is expressed or implied regarding whether the Buyer'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 the taxpayer who requested 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. 96-1, 1996-1 I.R.B. 8, 39. However, when the criteria in section 11.05 of Rev. Proc. 96-1 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 returns for Buyer and the respective partners for the taxable year in which the transaction covered by this ruling is consummated.

Sincerely yours,
Barbara Walker
Assistant to Chief, Branch 5
Office of the Assistant Chief Counsel
(Passthroughs & Special Industries)