

Private Letter Ruling 9728020, IRC Section 42

Date: April 10, 1997

LEGEND:

Partnership = ***

Seller = ***

Project = ***

Authority = ***

State A = ***

B = ***

C = ***

D = ***

Fund E = ***

City F = ***

b = ***

c = ***

d = ***

e = ***

f = ***

g = ***

h = ***

i = ***

j = ***

k = ***

l = ***

t1 = ***

t2 = ***

t3 = ***

t4 = ***

t5 = ***

t6 = ***

Dear ***

This ruling letter responds to your letter dated February 10, 1997, 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 t1 as a State A limited partnership to acquire, rehabilitate, and operate a low-income apartment complex (the Project). Partnership consists of individuals B, C, and D as the general partners with a b c and d percent interest, respectively, and Fund E as the limited partner with a e partnership percent partnership interest.

The Project consists of f apartment units housed in g residential buildings, with h units each, and an additional building containing a community room and laundry facility. The Project, located in City F, was placed in service by Seller on or around t2.

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 Partnership as the result of a servicing action by the Rural Housing Service (RHS) of the U.S. Department of Agriculture, to avert federal funds being at risk. The Rural Housing Service of the U.S. Department of Agriculture, formerly FmHA, has submitted a letter, dated t4, to the Internal Revenue Service designating the project as a "troubled project" based on a history of financial distress and mortgage default.

On t3, Partnership completed all the transactions involved in the acquisition of the Project from Seller. Consideration for the Project was \$i consisting of the assumption of a renegotiated loan with RHS in the amount of \$j as well as \$k to be paid the prior owner. Partnership further represents that it intends to spend approximately \$l to rehabilitate the Project.

Under the state low-income housing limitations provided by section 42(h), Partnership applied for and received a t5 reservation for an allocation of the low-income housing tax credit dollar amount from the State A Housing Finance Authority (Authority).

Since the interval between when the Project was last placed in service (t2) and the date of acquisition (t3) 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 t6, Authority signed a reservation letter for a t5 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 t3, 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 t3, 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 it was last placed in service on t2;

(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 of 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 solely 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.

Sincerely yours,

SUSAN J. REAMAN
Chief, Branch 5
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)