

Private Letter Ruling 9730021, IRC Section 42

Date: April 25, 1997

Dear ***

This ruling letter responds to your letter dated August 28, 1996, and subsequent correspondence 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). The facts as represented by Partnership are as follows.

Partnership was organized on t2 as a State A limited partnership to acquire, develop, own and operate an apartment complex (the Project) located in City C. The general partner of Partnership is Corp M with a b percent partnership interest, and N is the initial limited partner with a c percent partnership interest. Partnership anticipates that the initial limited partnership interest will be syndicated. Partnership is under the audit jurisdiction of the District Director in State A.

The Project consists of d residential apartment units housed in e residential buildings. The Project was placed in service on t1 by the former owner (Seller) and there have been no nonqualified substantial improvements to the buildings in the Project since that time.

On t3, Partnership acquired the Project from Seller by assuming the Farmers Home Administration (FmHA) outstanding debt of approximately \$f. FmHA has stopped short of actual foreclosure based on this acquisition and strongly favors rehabilitation of the Project by Partnership. Consequently, Partnership is spending \$g or approximately \$h per apartment unit to rehabilitate the Project. Partnership's rehabilitation of the Project will thereby exceed the minimum rehabilitation expenditures required by section 42(e). Partnership has requested an allocation of low income housing credit dollar amount from the Agency under the provisions of section 42(h).

Since the interval between t1 and t3 is less than 10 years, Partnership fails 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).

In a letter dated t4 the Internal Revenue Service was informed that the Project is a "troubled project" by the National Office of the Rural Housing Service (RHS) of the Department of Agriculture (formerly FmHA) based on a determination that it has a history of financial distress and mortgage default. The original copy of the RHS letter is included with the request for a ruling.

Partnership has made the following representations and certifications concerning the Project:

(1) Partnership's acquisition of the Project was by purchase (as defined under section 179(d)(2)) and as further restricted by section 42(d)(2)(D)(iii)(I);

(2) The Project was 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 in the Project were last placed in service.

(3) 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;

(4) As of t3 federal mortgage funds for the Project were at risk within the meaning of section 1.42-2(c)(2);

(5) There have been no nonqualified substantial improvements to the buildings in the Project since they were last placed in service;

(6) To the best of knowledge of Partnership no prior owner of the Project was allowed a low-income housing credit under section 42 for the Project;

(7) All terms and conditions of section 42 and related sections will be met except for the 10-year holding period requirement provided by section 42(c)(2)(B)(ii). Partnership asks that this requirement be waived under the authority granted the Secretary of the Treasury under section 42(d)(6)(A)(i);

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 this 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) section 221(d)(3) or section 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 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)(A)(i). You have represented that Partnership is in compliance with these requirements.

Based solely on the above facts and Partnership's representations as submitted, 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. 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 & Special Industries)