

Private Letter Ruling 9817027, 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 the low-income housing credit provisions for a limited partnership's acquisition of an apartment complex that it intends to rehabilitate to provide affordable housing to qualified low-income households.

Full Text:

Date: January 23, 1998

In Reference to: CC:COM:P&SI:5-PLR-119868-97

LEGEND:

Partnership = ***

Apartment Complex I = ***

Apartment Complex II = ***

Seller I = ***

Seller II = ***

Project = ***

Corp A = ***

Corp B = ***

Corp C = ***

Corp D = ***

Corp E = ***

Corp F = ***

County G = ***

State H = ***

City I = ***

J = ***

b = ***

c = ***

d = ***

e = ***

f = ***

g = ***

h = ***

i = ***

j = ***

k = ***
l = ***
m = ***
n = ***
t1 = ***
t2 = ***
t3 = ***
t4 = ***
t5 = ***
t6 = ***
t7 = ***
t8 = ***

Dear ***

This ruling letter responds to your letter dated October 21, 1997, 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)(C). The facts as you represented are as follows.

Partnership was organized as a limited partnership to purchase, rehabilitate, and operate as low-income housing Apartment Complex I and II (the Project) located in City I. Partnership consists of Corp A and Corp B, as the general partners, and Corp D, as the limited partner. Corp A is a public body corporate and politic that was formed to oversee and facilitate organizations in providing affordable housing to residents of County G of State H. Corp B is a tax exempt, nonprofit corporation under section 501(c)(3) formed

to facilitate organizations in providing affordable housing in State H. Partnership represents that it will substitute CORP C as the limited partner in Partnership for CORP D before the purchase of the Project.

Partnership is in the process of purchasing Apartment Complex I and Apartment Complex II and combining them into the Project. Apartment Complex I has b residential units that were initially placed in service in t1. Apartment Complex II has c residential units that were initially placed in service in t2.

Apartment Complex I and Apartment Complex II were previously acquired by Seller I and Seller II in t4. Financing for the complexes was provided by FHA-insured mortgages. The mortgage on Apartment Complex I was insured under section 236 of the National Housing Act. The mortgage on Apartment Complex II was insured under section 221(d)(3) of the National Housing Act. On t5, all of the partnership interests were foreclosed on except for the managing general partner's (J) interest of i percent, in each partnership. Since more than 50 percent of the profits and capital were transferred this

transaction was deemed a termination under section 708.

Historically, most of the units in both Apartment complexes have been rented to low-income tenants. Currently all but d of the e total units qualify for and receive rental subsidies under section 8 of the United States Housing Act of 1937.

Partnership plans to incur rehabilitation expenses of approximately \$f per unit to rehabilitate the Project Partnership intends to continue renting the Project to low-income tenants for the foreseeable future.

The purchase agreements for the Project currently require Partnership to pay the sellers the entire purchase price of each apartment complex. The sellers intend to pay the outstanding balance on the mortgages at closing. Since Partnership will not be assuming the mortgages, a transfer of physical assets will not be required by the Office of Asset Management and Disposition, U.S. Department of Housing and Urban Development.

On t3, Partnership signed a binding contract, to purchase Apartment Complex I from Seller I. Partnership anticipates acquiring possession of Apartment Complex I as soon as possible if it receives a favorable ruling from the IRS granting the requested waiver. Consideration for the purchase is \$g. Also on t3, Partnership signed a binding contract to purchase Apartment Complex II with Seller II. Consideration for the latter purchase is \$h. Apartment Complex I is currently secured by a purchase money loan payable to Corp E by Seller I. The outstanding balance on the loan, on t7 was approximately \$j. Apartment Complex II is secured by a purchase money loan payable to Corp F by Seller II. The outstanding balance of the loan on t7 was approximately \$k. Under the current purchase agreements, Partnership will pay the \$l promissory note in escrow, which becomes payable upon acceptance and removal of certain conditions. Partnership also will pay cash for the remainder of the purchase price of approximately \$m for Apartment

Complex I, and \$n for Apartment Complex II.

Since the interval between when the Project was last placed in service (t5) and expected date of acquisition 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. 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)(C).

On t6 the Internal Revenue Service received a letter from the Office of Asset Management and Disposition, U.S. Department of Housing and Urban Development (HUD) stating that the mortgages on the Apartment Complex I was insured under section 236 of the National Housing Act and that the mortgage on Apartment Complex II was insured under section 221(d)3 of the National Housing Act. Both mortgages are eligible for prepayment under subtitle B of the Emergency Low Income Housing Preservation Act of 1987 (or under section 502(c) of the Housing Act of 1949) at any time provided the owner gives the mortgagee and HUD a 30-day notice.

HUD also states that should the Internal Revenue Service not grant the 10-year waiver requested it is reasonable to anticipate that the Project will cease complying with the low-income requirements.

In addition, Seller I and Seller II have agreed to sign a waiver of their unconditional right to prepay the mortgages on the Project.

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

(1) The acquisition of the buildings in the Project will be 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) 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;

(4) As of t3, the buildings in the Project were "federally-assisted buildings" as defined in section 42(d)(6)(B) and section 1.42-2(c)(1) of the Income Tax Regulations;

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

(6) There have been no nonqualified substantial improvements to the buildings in the Project since it was last placed in service on t5;

(7) 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;

(8) All terms and conditions of section 42 and related sections, including minimum substantial rehabilitation as 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)(C).

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)(C) provides an exception to the 10-year holding period requirement of section 42(d)(2)(B)(ii). It states that a waiver may be granted under paragraph (A)(without regard to any clause thereof) with respect to a federally-assisted building described in clause (ii) or (iii) of subparagraph (B) if –

(i) the mortgage on such building is eligible for prepayment under subtitle B of the Emergency Low Income Housing Preservation Act of 1987 or under section 502(c) of the Housing Act of 1949 at any time within 1 year after the date of the application for such a waiver.

(ii) the appropriate Federal official certifies to the Secretary that it is reasonable to expect that, if the waiver is not granted, such building will cease complying with its low-income occupancy requirements, and

(iii) the eligibility to prepay such mortgage without the approval of the appropriate Federal official is waived by all persons who are so eligible and such waiver is binding on all successors of such persons.

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 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). You have represented that Partnership is in compliance with these requirements.

Based solely upon the above facts, the Partnership's representations, and the representations of HUD we have determined that the buildings in the Project are federally-assisted buildings within the meaning of section 42(d)(6)(B)(ii) and (iii), and are eligible for the waiver granted under section 42(d)(6)(C). 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)