

Private Letter Ruling 9830005, 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 a residential rental complex that it intends to rehabilitate to provide housing to qualified low-income households.

Full Text:

Date: April 21, 1998

Refer Reply to: CC:DOM:P&SI:5-PLR-105200-98

LEGEND:

Partnership = ***

Seller = ***

Agency = ***

Project = ***

State A = ***

Corp B = ***

C = ***

City D = ***

b = ***

c = ***

d = ***

e = ***

f = ***

g = ***

t1 = ***

t2 = ***

t3 = ***

t4 = ***

t5 = ***

t6 = ***

t7 = ***

t8 = ***

t9 = ***

Dear ***

This letter responds to your letter dated February 18, 1998, 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).

Partnership has made the following representations:

Partnership is a limited partnership formed as of t1 under the laws of State A for the purposes of developing, owning, and operating a low-income housing project to be financed in part with the proceeds of the low-income housing tax credit available pursuant to section 42.

Partnership consists of Corp B, a State A nonprofit corporation as the general partner, and individual C, as the initial limited partner. The general partner's current percentage ownership is b percent and the limited partner's current percentage ownership is c percent.

Prior to the acquisition of the Project, one or more additional limited partner/partners will be admitted to Partnership pursuant to a private offering, and C's interest will be redeemed and C will no longer have any interest as a partner of Partnership. At the time of admission, it is intended that the new limited partner/partners will contribute substantial capital to Partnership and be entitled to an allocation of b percent of each item of income, gain, loss, deduction, or credit. Negotiations with one or more new limited partners have not been completed and, therefore, it is not currently possible for Partnership to describe in further detail the actual terms of the proposed syndication.

On t2, Corp B entered into a purchase agreement to acquire the Project, which is a multi-family residential rental project located in City D, from Seller, a State A limited partnership. This agreement is conditioned, among other things, on Corp B receiving a favorable letter ruling from the Internal Revenue Service (Service) permitting Corp B to claim low-income housing tax credits with respect to the Project in accordance with section 42. The purchase agreement was subsequently amended on t3. Corp B assigned its interest in the purchase agreement, as amended, to Partnership effective as of t4. The purchase agreement was further amended on t5. Pursuant to the purchase agreement, as amended, the closing date for the acquisition of the Project by Partnership from Seller is no later than t6. Further, the amount of the consideration for the acquisition of the Project is the lesser of \$f or the Project's appraised value.

The Project consists of d rental buildings containing e residential units as well as a common area building. One-third of the common area building is used as a shop and storage area and the balance is used as the common mail area.

The Project has been owned by Seller during the 10 years preceding t2. However, the Project was last placed in service during t7 as the result of a technical termination of Seller under section 708(b). The Project is financed with a mortgage insured under section 236 of the National Housing Act and receives project-based rental assistance pursuant to section 8 of the United States Housing Act of 1937.

Partnership intends to apply to Agency, the housing credit agency of State A, for a binding t9 reservation of low-income tax credits. Upon receipt of a tax-credit reservation from the Agency, Partnership will acquire and rehabilitate the Project in conformance with section 42(d)(2)(B)(iv) and section 42(e).

On t8, the service received a letter from the Office of the Assistant Secretary For Housing, U.S. Department of Housing and Urban Development (HUD), stating that the current mortgage on the Project is insured under section 236 of the National Housing Act. This mortgage 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 provided the owner gives the mortgagee and HUD a 30-day notice. The letter further states that the Project also receives project-based assistance pursuant to section 8 of the United States Housing Act of 1937. The letter also states that if the Service does not grant the 10-year waiver requested, it is reasonable to anticipate that the Project will cease complying with the low-income occupancy requirements.

Partnership states its current estimate of rehabilitation expenses to be incurred for the Project is \$g. Upon placing the Project in service, Partnership intends to own and operate the Project in compliance with the requirements imposed by section 42, including the occupancy and rent restrictions thereof.

Since the interval between when the Project was last placed in service (t7) and the expected date of acquisition (t6) 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. Accordingly, 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).

Partnership has made the following additional 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) 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;

(3) As of t8, 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;

(4) As of t8 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 it was last placed in service in t7;

(6) 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;

(7) 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 the 10-year holding period requirement of 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 the 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). Pursuant to section 42(d)(6)(C), a waiver may be granted under section 42(d)(6)(A) (without regard to any clause thereof) with respect to a federally-assisted building described in section 42(d)(6)(B)(ii) or (iii) 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). Partnership represents that it is in compliance with these requirements.

Based solely upon Partnership's and HUD's representations and the relevant law and regulations set forth above, we have determined that the buildings in the Project are federally-assisted buildings within the meaning of section 42(d)(6)(B)(i) and (ii), and are eligible for the waiver granted under section 42(d)(6)(C). Therefore, we conclude 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 the application of any other provision of the Code or regulations. Specifically, we express no opinion on 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 letter ruling is directed only to Partnership which requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent. Pursuant to section 1.42-2(d)(5), a copy of this letter ruling shall be filed with the federal tax return for Partnership and its partners for the first taxable year in which the low-income housing credit for the Project is claimed by Partnership.

Sincerely yours,

Kathleen Reed

Assistant to the Branch Chief, Branch 5

Office of the Assistant Chief Counsel (Passthroughs and Special Industries)