200017052

Internal Revenue Service

Index No.: 42.04-07

Department of the Treasury

Washington, D.C. 20044

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:5 — PLR-119418-99
Date:
JAN 27 2000

Legend:

Partnership =

State =

Project =

Seller =

Original Owner =

Mortgagee =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

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Dear :

This letter responds to Partnership's authorized representative's letter dated December 3, 1999, and subsequent correspondence, submitted on behalf of Partnership, requesting a private letter ruling that will waive, for the Project, the ten-year holding period requirement for existing buildings of § 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 § 42(d)(6)(C).

Partnership has made the following representations:

FACTS:

Partnership is a State limited partnership that was organized to purchase, rehabilitate and operate the Project as low-income housing. Partnership intends to finance a portion of the Project with tax-exempt bonds subject to the bond volume cap under § 146 and receive an allocation of low-income housing tax credits pursuant to § 42(h). Upon securing the bond issuance and allocation of low-income housing credits, Partnership will acquire and rehabilitate the Project in conformance with § 42(d)(2)(B)(iv) and § 42(e).

The Project is currently owned by Seller, which acquired the Project on a. The original owner of the Project was Original Owner which developed the Project in b. Original Owner executed a mortgage note, dated c, in favor of Mortgagee in the original principal amount of $d.

On e, Partnership entered into a purchase agreement to acquire the Project. The purchase price for the Project is $f. The outstanding balance owed under the existing mortgage note as of g was approximately $h. Under the purchase agreement, Partnership may either assume or pay off the mortgage note on its acquisition of the Project. Partnership expects to assume, and will agree to waive prepayment of, the mortgage note. Partnership will pay cash for the remainder of the purchase price under the purchase agreement, approximately $i. Partnership anticipates acquiring possession of the Project as soon as possible if it receives a favorable ruling from the Service granting the requested waiver.

The Project has not been owned by Seller during the entire ten-year period ending on the expected acquisition date. The Project was last placed in service by Seller on a. The Project is financed with a mortgage insured under section 236 of the National Housing Act.

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Partnership represents that the current mortgage on the Project is insured under § 236 of the National Housing Act, and is eligible for prepayment under subtitle B of the Emergency Low Income Housing Preservation Act of 1987 at any time provided the owner gives the mortgagee and HUD the requisite statutory notice. In addition, Partnership received a letter from the Office of the Assistant Secretary for Housing, U.S. Department of Housing and Urban Development (HUD) stating that if the Service does not grant the ten-year waiver requested by Partnership, it is reasonable to expect that the Project will cease complying with the low-income occupancy requirements. Partnership represents that it has agreed to sign a waiver of its unconditional right to prepay the mortgage(s) on the Project.

Partnership estimates that rehabilitation expenditures in the amount of approximately $j will be incurred for the Project. Upon placing the Project in service, Partnership intends to own and operate the Project in compliance with all applicable requirements imposed under § 42, including the occupancy and rent restrictions.

Since the interval between the date the Project was last placed in service (a) and the expected date of acquisition (k) is less than ten years, Partnership has failed to meet the ten-year holding period requirement of § 42(d)(2)(B)(ii) for the existing building(s). Accordingly, Partnership has submitted this request for a waiver of the holding period requirement under the authority of the exception granted by § 42(d)(6)(C).

Partnership makes the following additional representations and certifications concerning the Project:

(1) The acquisition of the building(s) in the Project by Partnership will be by purchase (as defined in § 179(d)(2), as applicable under § 42(d)(2)(D)(iii)(I));

(2) Partnership acquired the building(s) 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 related (a "related person") (within the meaning of §42(d)(2)(D)(iii)(II)) to Partnership at the time the building(s) was last placed in service;

(4) As of the date hereof, the building(s) in the Project is "federally-assisted buildings" as defined in § 42(d)(6)(B) and § 1.42-2(c)(1) of the Income Tax Regulations;

(5) There have been no nonqualified substantial improvements to the building(s) in the Project since it was last placed in service on a;

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

(7) All terms and conditions of § 42 and related sections, including minimum substantial rehabilitation as provided by § 42(e)(3), will be met except for the ten-year holding period requirement of § 42(d)(2)(B)(ii). Partnership asks that this requirement be waived under the authority granted the Secretary of the Treasury by § 42(d)(6)(C).

RULING REQUESTED:

In connection with Partnership's purchase of the Project, Partnership requests that the Service waive the ten-year holding requirement of § 42(d)(2)(B)(ii) pursuant to the authority granted by the Secretary under § 42(d)(6)(C).

LAW AND ANALYSIS:

For an existing building to qualify for the 30-percent present value low-income housing tax credit, § 42(d)(2)(B)(ii) requires that there be a period of at least ten years between the date of the building's acquisition by the Partnership and the later of:

1. The date 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 ten-year holding period requirement of § 42(d)(2)(B)(ii). Pursuant to § 42(d)(6)(C), a waiver may be granted under § 42(d)(6)(A) (without regard to any clause thereof) with respect to a federally-assisted building described in § 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

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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 § 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 building(s) in the Project is federally-assisted buildings within the meaning of § 42(d)(6)(B)(ii), and are eligible for the waiver granted under § 42(d)(6)(C). Therefore, we conclude that the 10-year holding period requirement of § 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 building(s) in the Project will qualify otherwise for the low-income housing credit under § 42.

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to § 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.

In accordance with the power of attorney filed with this request, we are sending a copy of this letter ruling to Partnership's first authorized representative.

Sincerely yours,

(Signed) Susan J. Reaman

Susan Reaman
Chief,
Branch 5
Office of Assistant Chief Counsel
(Passthroughs and Special
Industries)

Enclosures(2):
copy for 6110 purposes
copy for filing purposes

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