

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

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Date: October 31, 2000

Legend:

Taxpayer =

City =

State 1 =

State 2 =

Project =

GP1 =

GP2 =

GP3 =

LP =

Member =

LP1 =

LP2 =

Address =

Addresses =

Owner =
Agency =
Counties =
a =
b =
c =
d =
e =
f =
g =
h =
i =
k =
l =
m =
n =
o =
p =
q =

Dear :

This letter responds to your letter dated August 16, 2000, and subsequent correspondence, submitted on behalf of Taxpayer requesting a ruling that will waive for Project buildings the 10-year holding period requirement for existing buildings of § 42(d)(2)(B)(ii) of the Internal Revenue Code, under authority of the exception for the acquisition of certain federally-assisted buildings provided in § 42(d)(6)(A). The Internal Revenue Service Office that will have examination jurisdiction over the Taxpayer and its subsidiaries is located in City.

The relevant facts as represented in these submissions are set forth below.

FACTS:

Taxpayer is a limited partnership organized on a, under the laws of State 1. The sole business purpose of Taxpayer is redeveloping and operating Project, a e building project with f total units located at Address. The specific addresses for each building in Project are Addresses. Project is currently receiving g units of assistance under Section 515 of the Housing Act of 1949.

Taxpayer is comprised of GP1, a b% general partner, GP2, a c% general partner, and LP, a d% limited partner. GP1, which is a State 2 limited liability corporation, is comprised of Member, GP1's sole member.

Taxpayer entered into a binding contract with Owner on i to purchase Project on g. Owner is a State 1 limited partnership with GP3 as its general partner. At the time of the proposed acquisition on g, Owner's outstanding loan on Project will be \$m. This loan is secured by a mortgage held by the United States Department of Agriculture--Rural Development (USDA-RD). As part of the purchase price for Project, Taxpayer will fully assume this mortgage. Further consideration paid by Taxpayer for Project will be \$n, with the total purchase price of Project being \$o.

Project buildings were initially placed in service by Owner before k. More than 10 years later, on h, LP1, a limited partner of Owner, sold its entire j% limited partnership interest to LP2. This sale resulted in a technical termination of Owner and new placed in service dates for Project buildings. After the technical termination, Owner continued to own and operate Project in partnership form. Taxpayer intends to qualify Project buildings for the acquisition credit under § 42. Since the interval between when the Project buildings were last placed in service (on h) and expected date of acquisition by Taxpayer is less than 10 years, Taxpayer has failed to meet the 10-year holding period requirement of § 42(d)(2)(B)(ii) for existing buildings. Taxpayer has submitted this request for a waiver of the holding period requirement under the authority of the exception granted by § 42(d)(6)(A) and § 1.42-2(c)(2) of the Income Tax Regulations.

In a letter to the Internal Revenue Service from the Office of Multi-Family Housing at USDA-RD, dated p, the USDA-RD stated that it has reviewed the financial condition of Project and has designated Project as a "troubled project" based on a determination that it has a history of financial distress and mortgage default, and that USDA-RD would support the issuance of a waiver under § 42(d)(6) for Project.

Taxpayer has made the following representations and certifications concerning Project:

(1) that it will acquire Project by purchase (as defined under § 179(d)(2), and as further restricted by § 42(d)(2)(D)(iii)(I);

(2) that there have been no nonqualified substantial improvements (as defined in § 42(d)(2)(D)(i)) to any of the Project buildings since k;

(3) that the buildings in Project were not previously placed in service by Taxpayer, or by a person who was a related person (as defined in § 42(d)(2)(D)(iii)(II)) to Taxpayer at the time the buildings were last placed in service;

(4) that, to the best of Taxpayer's knowledge, no prior owner of Project was allowed a § 42 low-income housing credit;

(5) that, as of the date of Taxpayer's application, the buildings in Project are federally-assisted buildings as defined in § 1.42-2(c)(1); and

(6) that, as of the date of Taxpayer's application, federal mortgage funds for Project were at risk within the meaning of § 1.42-2(c)(2).

RULING REQUESTED:

Taxpayer requests the Service to waive, for the buildings in Project, the 10-year holding period requirement for existing buildings of § 42(d)(2)(B)(ii), under authority of the exception for the acquisition of certain federally-assisted buildings provided in § 42(d)(6)(A).

LAW AND ANALYSIS:

Section 38(a) provides for a general business credit against tax that includes the amount of the current year business credit. Section 38(b)(5) provides that the amount of the current year business credit includes the low-income housing credit determined under § 42(a).

For an existing building to qualify for the 30-percent present value housing tax credit § 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) 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 for a federally assisted building if the Secretary determines that the waiver is necessary--

- (i) 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 (now USDA-RD), or
- (ii) to avert a claim against a Federal mortgage insurance fund (or such Department or Administration) with respect to a mortgage which is so secured.

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). Taxpayer represents that it is in compliance with these requirements.

Based solely upon the above facts, Taxpayer's representations, and the representations of USDA-RD, we have determined that the buildings in the Project are federally-assisted buildings within the meaning of § 42(d)(6)(B)(iii), and are eligible for the waiver granted under § 42(d)(6)(A). Therefore, we rule as follows:

The 10-year holding period requirement of § 42(d)(2)(B)(ii) is waived for Taxpayer's acquisition of Project buildings.

No opinion is expressed or implied regarding whether Taxpayer's costs of acquisition and rehabilitation of the buildings in Project will qualify otherwise for the low-income housing credit under § 42.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(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 Taxpayer and the respective partners of Taxpayer for the taxable year the Form 8609, Low-Income Housing Credit Allocation Certification, for each building in Project is first filed.

Sincerely yours,
Harold E. Burghart
Assistant to the Branch Chief, Branch 5
Office of Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosure:

6110 copy

cc: