PRIVATE LETTER RULING 9606004

(Denial of 10 year Rule Waiver)

"This document may not be used or cited as precedent. Section 6110(j)(3) of the Internal Revenue Code."

Section 42
Low-Income Housing Credit

0042.04-07

DATE: November 7, 1995

Refer Reply to: CC:DOM:P&SI:5-TR-31-1473-95

Dear * * *

This letter responds to your letter of June 28, 1995, 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 with respect to the acquisition of the Project from an insured financial institution in default or receiver or conservator thereof under the exception provided in section 42(d)(6)(D).

Partnership has made the following representations:

On t1, Bank 1, which held the mortgage on the Project, closed and Agency 1 was appointed receiver. Agency 1 later entered into an agreement to transfer certain assets and liabilities of Bank 1 to Bank 2 (a bridge bank). Bank 2 closed on t2, and Agency 1 was appointed its receiver pursuant to an Appointment of Receiver and acceptance. Bank 3, as successor of Bank 2 acquired the Project pursuant to a Judgement and Decree of Foreclosure dated t3 and a Certificate of Non-Redemption dated t4. Also, on t4, Agency 1 transferred certain assets and liabilities of Bank 2 (including the Project) to Bank 3 under a Purchase and Assumption Agreement.

On t6, Partnership was formed as a State Q limited partnership with Corp K and L as the general partners and Corp M as the limited partner. In addition, on t6, Partnership became assignee of an option to purchase the Project which originally had been made between Bank 3 and Corp M on t5. Corp K and L each maintain a b percent partnership interest, and Corp M has a c percent partnership interest. Partnership intends to seek a substantial equity investment from a single limited partner in exchange for Corp M's partnership interest. Partnership is under the examination jurisdiction of the District Director in City O.

The loan on the Project was originally booked at , but the loan was later charged down to . Pursuant to its agreement with Bank 3 on t4, Agency 1 has already reimbursed Bank 3 for j percent of the charge down. In addition, under the agreement of t4, Agency 1 will further pay Bank 3 j percent of any decrease in book value of the loan below . Partnership, provided it receives a favorable ruling, will purchase the Project for under the terms of the t5 Option Agreement with Bank 3.

The Project consists of d apartment units housed in e buildings, located in City N. The Project is in poor condition, and Partnership intends to demolish f buildings and substantially rehabilitate the remaining buildings to create g rehabilitated apartment units. Partnership has received a t7 allocation of low income housing tax credit reservation from Agency 2. Based on this reservation Partnership intends to spend on rehabilitation of the Project.

Partnership has made the following additional representations and certifications with respect to the Project:

1. The acquisition of the Project is by purchase (as defined in section 179(d)(2), as applicable under 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 related person (as defined in section 42(d)(2)(D)(iii)(II)) with respect to Partnership as of the time the Project was last placed in service;

3. Partnership has obtained a letter from Agency 1 dated t8 stating that as the receiver for Bank 2 it is responsible for j percent of Bank 3's losses and expenses;

4. To the best of the knowledge of Partnership and Partnership's representatives, there have been no nonqualified substantial improvement to the buildings in the Project since they were last placed in service;

5. To the best of the knowledge of Partnership and Partnership's representatives, no prior owner of the Project was allowed a low- income housing tax credit under section 42 for the Project;

6. All terms and conditions of section 42 and related sections, including substantial rehabilitation of a minimum of $3,000 per apartment unit, will be met, except for the 10-year holding period requirement provided by section 42(d)(2)(B)(ii), and Partnership asks that this requirement be waived under the authority granted the Secretary of the Treasury by section 42(d)(6)(D); and

7. The date of purchase of the Project will be after the date of enactment of the Revenue Reconciliation Act of 1989, (December 19, 1989) and therefore, the purchase complies with the effective date of section 42(d)(6)(D).

Section 42(d) provides rules for determining the eligible basis of a new or existing building, a factor used in computing the amount of credit earned. Section 42(d)(2)(B)(ii), however, requires that as of the date the building is acquired by the taxpayer at least 10 years must have elapsed since the later of the date the building as last placed in service or the date of the most recent nonqualified substantial improvement of the building.

Section 42(d)(6)(D) provides an exception to the 1O-year holding period requirement of section 42(d)(2)(B)(ii) to the effect that on application with respect to any building if the Secretary (after consultation with the appropriate federal official) determines that the building is being acquired from an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act) or from a receiver or conservator of such an institution.

In the present case, the Project is not being acquired from an insured depository institution in default or from the receiver or conservator of such institution. Instead, Partnership intends to acquire the Project from Bank 3, a solvent financial institution. Therefore, Partnership's proposed acquisition of the project does not fall within the exception provided in section 42(d)(6)(D).

Consequently, based upon Partnership's representations, we rule that the 10-year holding period requirement under section 42(d)(2)(B)(ii) is not waived with respect to Partnerships proposed
acquisition of the Project.

No opinion is expressed or implied regarding the federal tax consequences of the facts described above under any other provision of the Code. This ruling is directed only to Partnership who requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling may be modified or revoked if the adopted temporary or final regulations are inconsistent with any conclusion in the ruling. See section 11.04 of *Rev. Proc. 95-1, 1995-1 I.R.B.* 41. However, then the criteria in 11.05 of *Rev. Proc. 95-1* are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

Sincerely yours,
JAMES RANSON
Chief, Branch 5
Office of the Assistant
Chief Counsel
(Passthroughs & Special Industries)