

Rev. Rul. 95-49, 1995-2 CB 7, IRC Section 42

Issue

Does an extended low-income housing commitment satisfy section 42(h)(6) if its provisions may be suspended or terminated after the compliance period when a tenant exercises a right of first refusal to purchase a low-income building?

Facts

The owner (Owner) of a qualified low-income building (as defined in section 42(c)(2) of the Internal Revenue Code) rents the building to a single low-income family (Tenant). In an agreement between the Owner and the Tenant, the Owner grants the Tenant a right of first refusal to purchase the building after the close of the 15-year compliance period (as defined in section 42(i)(1)) at a minimum purchase price as specified in section 42(i)(7)(B). The provisions of the extended low-income housing commitment (Commitment) executed by the Owner with the applicable state housing agency (Agency) are terminated after the compliance period if the right is exercised by the Tenant. The Commitment otherwise meets the requirements of section 42(h)(6).

Law and Analysis

Section 42 provides a tax credit for investment in qualified low-income buildings placed in service after December 31, 1986.

Section 42(h)(6) provides that no tax credit is allowed for a building unless an extended low-income housing commitment between the low-income building owner and the appropriate housing credit agency is in effect at the end of the taxable year. The commitment is binding on all successors to the owner and includes certain provisions that continue after the close of the building's 15-year compliance period. One of the commitment's provisions ensures that a certain percentage of a low-income building's units will continue to be available for rental by low-income tenants after the close of the compliance period.

Section 42(i)(7) provides that no federal income tax benefit fails to be allowable to the owner of a qualified low-income building merely by reason of a right of first refusal held by the building's tenants to purchase the building after the close of the 15-year compliance period. Section 42(i)(7) also continues the availability of low-income housing beyond the compliance period by permitting low-income tenants to be homeowners instead of renters.

The objectives of section 42(h)(6) and (i)(7) are similar in that both sections attempt to promote housing for low-income individuals beyond the compliance period, by rental in the case of section 42(h)(6) or by outright ownership in the case of section 42(i)(7).

Accordingly, under section 42(h)(6) it is appropriate for an owner and a state housing agency to reference a right of first refusal to be granted by the owner to tenants (either initially or by later amendment) in a commitment between the owner and the agency. In this case, the Owner and the Agency have agreed that the

provisions of the Commitment will be terminated after the compliance period on the exercise by the Tenant of a right of first refusal. The Commitment nevertheless satisfies section 42(h)(6). The Commitment would likewise have satisfied section 42(h)(6) if it had provided that application of its provisions would be suspended, subject to conditions imposed by the Agency, on the exercise of the Tenant's right of first refusal.

Holding

An extended low-income housing commitment satisfies section 42(h)(6) even though its provisions may be suspended or terminated after the compliance period when a tenant exercises a right of first refusal to purchase a low-income building.

Drafting Information

The principal author of this revenue ruling is Christopher J. Wilson of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling contact Mr. Wilson on (202) 622-3040 (not a toll-free call).