

Private Letter Ruling 199903004, IRC Sec(s). 42

UIL No. 42.14-00

Headnote:

Reference(s): Code Sec. 42;

The Service has ruled that an agency may correct an administrative error in a carryover allocation for a low-income housing credit.

Full Text:

Release Date: 1/22/1999

Date: October 21, 1998

Refer Reply To: CC:DOM:P&SI:5 – PLR-116715-98

LEGEND:

Partnership = ***

Agency = ***

General Partner = ***

Project = ***

State = ***

City = ***

a = ***

b = ***

c = ***

d = ***

e = ***

f = ***

g = ***

h = ***

i = ***

j = ***

k = ***

l = ***

m = ***

n = ***

o = ***

p = ***

q = ***

r = ***

s = ***

t = ***

Dear ***

This letter responds to your authorized representative's letter dated July 16, 1998, that was submitted on behalf of Agency and Partnership, requesting a letter ruling under section 42(n)(4) of the Internal Revenue Code and section 1.42-13(b) of the Income Tax Regulations to correct an administrative error in an allocation of the low-income housing credit dollar amounts.

Agency and Partnership represent that the facts are as follows:

FACTS:

Partnership is a State limited partnership that was formed on a for the purpose of owning and operating the Project, a residential rental project consisting of e units, located in City.

Partnership expects that all of the units in the Project will qualify for low-income housing credits pursuant to section 42.

On b, Partnership submitted an application to Agency for a reservation of c low-income housing credits in the amount of \$d. The application reflected a site plan calling for e units in f buildings. On g, the Project received a reservation letter from Agency tentatively reserving low-income housing credits in the amount of \$h to f buildings in the Project.

Subsequent to the submission of the application for low-income housing credits and receipt of the reservation letter, but before i, the site plan for the Project was reconfigured by Partnership's architect. The final site plan called for the construction of j residential buildings consisting of e units and k common building. The reconfiguration of the Project arose from Partnership's need to accommodate a l foot right-of-way in favor of a local utility provider.

In the original Project design, the general partner and the architect were aware of the utility right-of-way that was situated m feet on the Project site and m feet on the adjoining neighbor's property. However, it was the general partner's and the architect's understanding that the utility would agree to a modification of its right-of-way to permit the full use of the Project site.

After receipt of the reservation letter of c low-income housing credits, the utility informed the general partner and the architect that it would not permit a modification of its l foot right-of-way. Thus, to accommodate the right-of-way, it would have required Partnership to increase the density of the Project to such an extent so as to make the Project unsightly and reduce its function to the ultimate detriment of the residents.

In order to accommodate the utility right-of-way and produce a functional apartment complex, General Partner, on behalf of Partnership, acquired an additional n acre lot adjacent to the Project site. Utilizing this additional acreage, the architect was able to accommodate the utility right-of-way. Moreover, the additional acreage allowed the architect to reduce density by the addition of o buildings and the conversion of an

existing house on the additional lot to an administrative office/manager's building. General Partner informed the staff of Agency of the acquisition by Partnership of the additional lot and the increase of the Project to j buildings from f buildings in the original design and Agency staff had no objection.

Partnership submitted a carryover certification on p to Agency, showing it would have an accumulated basis in the Project as of i equal to at least \$q, representing approximately r percent of the reasonably anticipated basis in the Project of \$s. Nothing in the carryover certification indicated that the number of buildings in the Project had changed. By p, Partnership and General Partner were aware that the finalized plans called for the Project to have j residential buildings. However, the preparer of Partnership's carryover certification was unaware of this change and believed that the Project was to consist of f residential buildings and completed the carryover certification accordingly.

Agency issued a carryover allocation on i in the amount of \$h per year. In the c carryover allocation, f building identification numbers (BINs) were assigned to the f originally contemplated residential buildings. The carryover allocation did not reflect the change in the Project configuration from f residential buildings to j residential buildings.

In t, Partnership's counsel discovered that the Project consisted of j residential buildings, rather than the original f. Upon discovery of the error, Partnership's counsel informed General Partner that General Partner needed to contact Agency about the appropriate procedure to correct the error. Shortly thereafter, General Partner contacted Agency and was informed by Agency that a private letter ruling would be necessary to correct the error. Partnership then began to assemble the information necessary to obtain approval of Agency's Board of Commissioners for Agency to file a request for a private letter ruling and enable the drafting and submitting of the request for a private letter ruling.

As a result of the modifications made to the original site and the original site plan, the number and location of the buildings that are to be used on the certificates of occupancy will no longer match the number assigned by Agency for purposes of providing a carryover allocation. Thus, the Forms 8609, Low-Income Housing Credit Allocation Certification, to be issued to the Project will not reflect the correct number of buildings in the Project.

Agency and Partnership, at the time of the c carryover allocation, intended for e units to be considered in the Project. The existing building-by-building carryover allocation does not allow Partnership to maximize the credits allocated to the Project as reconfigured on the additional acreage and seriously affects the Project's financial feasibility. Thus, the c

carryover allocation inaccurately reflects the intent of Agency and Partnership at the time of the carryover allocation document was prepared.

The correction of the administrative error or omission will have no effect on the housing credit ceiling under section 42(h)(3)(C) or on Agency's unused housing credit carryover that is assigned to the Secretary under section 42(h)(3)(D).

In connection with the above statement of facts, Agency represents that: (1) it intended to make a project-based allocation to the Project pursuant to section 42(h)(1)(F); (2) the number of buildings in the Project was not material to the allocation for the Project; and (3) the fact that the Project had j residential buildings rather than f would not have affected (a) the amount of credit allocated to the Project, (b) the ranking of the Project in Agency's c allocation round, or (c) any other aspect of the carryover allocation for the Project.

RULING REQUESTED:

Agency and Partnership request the Internal Revenue Service to rule that Agency can amend the c carryover allocation to include BINs for the o buildings added to the Project and allocate the appropriate amount of low-income housing tax credit to each of the j buildings in the Project, not exceeding \$h for the entire Project.

As required under section 1.42-13(b)(3)(v), Agency and Partnership hereby agree to such conditions as the Secretary considers appropriate if the above ruling request is granted.

LAW AND ANALYSIS:

Under section 42(n)(4), state and local housing credit agencies may correct administrative errors and omissions concerning allocations and recordkeeping within a reasonable period of time after their discovery. Section 1.42-13(b)(2) defines an administrative error or omission as a mistake that results in a document that inaccurately reflects the intent of the agency at the time the document is originally completed or, if the mistake affects a taxpayer, a document that inaccurately reflects the intent of the agency and the affected taxpayer at the time the document is originally completed. Section 1.42-13(b)(1), however, provides that an administrative error or omission does not include a misinterpretation of the applicable rules and regulations under section 42.

In the present case, Partnership committed an administrative omission when the carryover certification failed to reference j buildings. This omission was not a misinterpretation of the applicable rules and regulations under section 42. However, this omission did result in a document (i.e., c carryover allocation) that did not accurately reflect the intent of Agency and Partnership at the time the document was executed. The intent of Agency was to allocate the same amount of credit to the Project, notwithstanding the number of

the buildings in the Project. Further, the change does not affect the amount of housing credit dollar amount allocated to the Project nor the ranking of the Project in Agency's c allocation round, nor any other aspect of the carryover allocation for the Project. Thus, a correctable administrative omission occurred in this situation.

Under the represented facts, the carryover allocation is the credit allocating document. Under section 1.42-13(b)(3)(iii)(A), the Secretary must pre-approve a correction of an administrative error or omission if the correction is not made before the close of the calendar year of the error or omission and the correction requires a numerical change to the credit amount allocated for the building or project. In the present case, the correction would involve a numerical change to the credit amount allocated to the f buildings that received BINs.

Based solely on the representations and the relevant law and regulations set forth above, we conclude as follows:

1. Partnership committed an administrative omission when the carryover certification submitted to Agency failed to indicate the increase in the number of buildings in the Project as a result of the change in the site plan;
2. Because of that administrative omission, the c carryover allocation inaccurately reflects the intent of Agency and Partnership when the c carryover allocation was executed;
3. Agency will correct the administrative omission within a reasonable period of time after Agency became aware of the administrative omission;
4. Agency will issue o additional BINs to accurately reflect that there are j buildings in the Project; and
5. Agency will allocate low-income housing tax credit to each of the j buildings in the Project, not exceeding \$h for the entire Project.

To correct this administrative omission, Agency must do the following:

1. Amend the c carryover allocation to include BINs for the o additional buildings in the Project and to allocate the appropriate amount of low-income housing tax credit to each of the j buildings in the Project, not exceeding \$h for the entire Project. The new BINs do not have to be in sequential order with the existing f BINs and the existing f BINs shall continue in effect. On the amended c carryover allocation, Agency should indicate that it is making the correction under section 1.42-13(b); and
2. Attach a copy of the amended c carryover allocation to an amended Form 8610, Annual Low-Income Housing Credit Agencies Report, for c, and file the amended Form 8610 with the Service. When completing the amended Form 8610, the Agency should follow the specific instructions on the Form 8610 under the heading "Amended Reports".

No opinion is expressed or implied regarding the application of any other provisions of the Code or regulations. Specifically, we express no opinion on whether the Project qualifies for the low-income housing tax credit under section 42 nor the validity of the Project's costs included in eligible basis.

In accordance with the powers of attorney filed with this request, we are sending copies of this letter ruling to Agency's authorized representative and Partnership's authorized representatives.

This 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.

Sincerely yours,

Kathleen Reed

Assistant to the Branch Chief, Branch 5

Office of Assistant Chief Counsel (Passthroughs and Special Industries)