

Private Letter Ruling 199910015, 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 pertaining to a low- income housing credit.

Full Text:

Release Date: 3/12/1999

Date: December 7, 1998

Refer Reply To: CC:DOM:P&SI: 5 - PLR-118226-98

LEGEND:

Partnership = ***
Agency = ***
Project = ***
State = ***
Addresses 1 = ***
Addresses 2 = ***
Previous Owner = ***
General Partner = ***
Individual = ***
Local Government = ***
Company = ***
a = ***
b = ***
c = ***
d = ***
e = ***
f = ***
g = ***
h = ***
i = ***
j = ***
k = ***
l = ***

Dear ***

This letter responds to your authorized representative's letter dated September 9, 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 to complete development of and operate the Project as a low-income housing project in compliance with section 42. The Project is located at Addresses 1 and consists of a contiguous buildings with a total of b residential units.

The Project was originally owned and developed by Previous Owner. On c, Previous Owner and Agency entered into a carryover allocation agreement with respect to the Project providing for an annual low-income housing tax credit of \$d. The Project as described in the application for low-income housing tax credits filed by Previous Owner with Agency was to consist of b units located at Addresses 1.

The e carryover allocation described the Project as having Addresses 2, but indicated that only f building identification number (BIN) had been assigned to the Project.

Previous Owner was unable to complete the rehabilitation of the Project. In g, at the request of the Local Government, Company and Individual agreed to take on the completion of the development of the Project through Partnership. In conjunction with taking on the completion of the Project on a "step-into-the-shoes" basis, as permitted by section 42(d)(7), an additional allocation of low-income housing tax credits referred to as a "hardship allocation" was requested from Agency. On h, Agency issued a reservation letter granting an additional low-income housing tax credit of \$i.

The Project was deemed placed in service under section 42(e)(3) on j.

On k, a carryover certification was entered into between Agency and Partnership with respect to the additional allocation of \$i. The g carryover allocation described the Project as having Addresses 1, but treated the Project as consisting of a buildings with a separate BINs.

It came to Agency's attention that there was an inconsistency between the f BIN assigned at the time of the e carryover allocation and the a BINs assigned at the time of the g carryover allocation.

Agency has advised Partnership of the existence of the discrepancy and the need to obtain a letter ruling clarifying the number of buildings involved in the Project. Partnership contacted its counsel and preparation of the letter ruling request began immediately.

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

carryover allocation for the Project; (3) the fact that the Project had a residential buildings rather than f would not have affected (a) the amount of low-income housing tax credit allocated to the Project in e or g, (b) the ranking of the Project in Agency's allocation rounds, or (c) any other aspect of the carryover allocations for the Project; and (4) the correction will have no effect on the determination of the components of Agency's housing credit ceiling under section 42(h)(3)(C) or Agency's unused housing credit carryover that is assigned to the Secretary under section 42(h)(3)(D).

RULING REQUESTED:

Agency and Partnership request the Service to rule that Agency can amend the e carryover allocation to include a BIN for each of the a buildings in the 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, Agency committed an administrative error when the e carryover allocation failed to reference a buildings. This error was not a misinterpretation of the applicable rules and regulations under section 42. However, this error did result in a document (i.e., e 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 e allocation round, nor any other aspect of the carryover allocation for the Project. Thus, a correctable administrative error occurred in this situation.

Under the represented facts, the e 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 building that received a BIN.

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

1. Agency committed an administrative error when it issued f BIN, instead of a BINs, for the Project;
2. Because of that administrative error, the e carryover allocation inaccurately reflects the intent of Agency and Partnership when the e carryover allocation was executed;
3. Agency will correct the administrative error within a reasonable period of time after Agency became aware of the administrative omission; and
4. Agency will issue l additional BINs to accurately reflect that there are a buildings in the Project.

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

1. Amend the e carryover allocation to include BINs for the l additional buildings in the Project and to allocate the appropriate amount of low-income housing tax credit to each of the a buildings in the Project, not exceeding \$d for the entire Project. The new BINs do not have to be in sequential order with the existing f BIN and the existing f BIN shall continue in effect. On the amended e 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 e carryover allocation to an amended Form 8610, Annual Low-income Housing Credit Agencies Report, for e, 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, on the validity of the Project's costs included in eligible basis, or on whether section 42(d)(7) applies to Partnership or the Project.

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

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)