

Private Letter Ruling 199912011, IRC Section 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 an allocation of low-income housing credits.

Full Text:

Release Date: 3/26/1999

Date: December 21, 1998

Refer Reply To: CC:DOM:P&SI:5-PLR-121410-98

LEGEND:

Partnership = ***

Agency = ***

Project = ***

City = ***

State = ***

District = ***

Addresses 1 = ***

Addresses 2 = ***

a = ***

b = ***

c = ***

d = ***

e = ***

f = ***

g = ***

h = ***

i = ***

j = ***

k = ***

l = ***

Dear ***

This letter responds to one of Partnership's authorized representative's letter dated November 11, 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 calendar year taxpayer that uses the accrual method of accounting. The District Office of the Internal Revenue Service that has or will have examination jurisdiction over Partnership is District.

Partnership is a State limited partnership that was formed to construct, develop, and operate the Project, a multi-family low- income housing project in City, pursuant to section 42.

In connection with the development of the Project, Partnership made application for a reservation of low-income housing tax credits with Agency and received a reservation of low-income housing tax credits from Agency on a. The Project consists of b buildings containing a total of c units. The Utilization of a Reservation Affidavit (Utilization Affidavit) prepared by Partnership and dated d and provided to Agency indicated that there were b buildings at the addresses set forth in the Utilization Affidavit (e of which addresses were different from those listed in the application for low-income housing tax credits). The addresses set forth in the Utilization Affidavit are the correct addresses for the Project.

As a general matter, Agency relies upon and utilizes the information contained in the Utilization Affidavit in order to complete the tax credit allocation document. On f, Agency issued an allocation of low-income housing tax credits for the Project in the amount of \$g annually. The project-based allocation issued b BINs for b property addresses set forth in an attachment to the allocation. However, e of the b property addresses listed in the exhibit to the allocation, namely, Addresses 1, are not part of the Project, but were mistakenly listed by Agency in lieu of the correct addresses, Addresses 2.

The Project contains the same number of units (c), the same number of low-income units (c), the same mix of one, two, and three bedroom units as called for under the original plan, and each unit consists of substantially the same square footage as provided in the original plan. The Project is expected to be completed by i. Agency issued the allocation to the Project based upon the Project's building plan of b buildings located in that area of State.

Investor's counsel, upon reviewing the tax credit documents, discovered in mid- j that e of the property addresses set forth in the allocation were incorrect. On or about k, Partnership requested that a private letter ruling would be required. Partnership submitted a draft request to Agency and its outside counsel for review in early l. Shortly thereafter, outside counsel for Agency returned the draft to the counsel for Partnership for revision and submission.

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 addresses of the buildings in the Project were not material to the allocation for the Project; and (3) the fact that the Project does not contain the e buildings erroneously set forth in the allocation but instead contains buildings with e other addresses would not have affected (a) the amount of low-income housing tax credit allocated to the Project, (b) the ranking of the Project in Agency's h allocation round, or (c) any other aspect of the allocation for the Project.

RULING REQUESTED:

Agency and Partnership request a ruling that Agency can amend the h allocation to include a BIN for each of the e buildings in the Project located at Addresses 2 under section 42(n) of the Code and 1.42-13(b) of the regulations. As required by 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 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 it issued e BINs for e addresses not a part of the Project in the h allocation, thereby failing to issue a BIN for each of the buildings located at Addresses. This error did not result from a misinterpretation of the applicable rules and regulations under section 42. However, the error did result in a document (i.e., h 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 make a project-based allocation to the Project and not to a specific building in the Project. Further, the change does not affect the housing credit dollar amount allocated to the Project nor the ranking of the Project in Agency's h allocation round, nor any other aspect of the allocation for the Project. Thus, a correctable administrative error occurred in this situation.

Under the represented facts, the h allocation is the credit allocating document. Under

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 e buildings located at Addresses 2.

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

1. Agency committed an administrative error when it mistakenly issued BINs for e buildings not located in the Project, instead of issuing BINs for the Project's e buildings located at Addresses 2;
2. Because of this administrative error, the h allocation inaccurately reflects the intent of Agency and Partnership at the time the h allocation was executed;
3. Agency and Partnership requested approval to correct the administrative error within a reasonable period of time after Agency became aware of the administrative error; and
4. Agency will issue e BINs to the e buildings in the Project located at Addresses 2 to accurately reflect the b buildings in the Project.

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

1. Amend the h allocation to include BINs for the e buildings located at Addresses 2 in the Project. The new BINs do not have to be in sequential order with the existing b BINs and the existing b BINs shall continue in effect except for the e BINs issued for the buildings located at Addresses 1. On the amended h allocation, Agency should indicate that it is making the correction under section 1.42-13(b); and
2. Attach a copy of the amended h allocation to an amended Form 8610, Annual Low-income Housing Credit Agencies Report, for h, and file the amended Form 8610 with the Service. When completing the amended Form 8610, 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 power of attorney filed with this request, we are sending copies of this letter ruling to Partnership, Partnership's second authorized representative, Agency, and Agency's first 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,

Susan Reaman

Chief, Branch 5

Office of Assistant Chief Counsel (Passthroughs and Special Industries)