

Private Letter Ruling 199916020, 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: 4/23/1999

Date: January 20, 1999

Refer Reply To: CC:DOM:P&SI:5-PLR-120264-98

LEGEND:

Agency = ***

Partnership = ***

General Partner = ***

City 1 = ***

City 2 = ***

City 3 = ***

State 1 = ***

State 2 = ***

a = ***

b = ***

c = ***

d = ***

e = ***

f = ***

g = ***

h = ***

i = ***

j = ***

k = ***

l = ***

Dear ***

This letter responds to your authorized representative's letter dated a, and subsequent

correspondence, on behalf of the Agency, Partnership, and General Partner requesting a ruling under section 42(n) of the Internal Revenue Code and section 1.42-13(b) of the Income Tax Regulations to allow Agency, Partnership, and General Partner to correct an administrative error or omission in an allocation of low-income

housing credit dollar amounts. The Internal Revenue Service District Office that will have examination jurisdiction over Partnership is located in City 2. The Internal Revenue Service District Office that will have examination jurisdiction over General Partner is located in City 1.

The relevant facts as represented in your submission are set forth below.

FACTS

Agency is a State 2 agency responsible for assigning Federal low-income housing tax credits to the owners of low-income housing projects which are developed in State 2.

Partnership is a State 2 limited partnership formed by General Partner in b to be the owner of a low-income housing project developed by General Partner in City 3.

General Partner is a State 1 corporation engaged in the business of developing low-income housing projects.

On c, General Partner submitted to Agency a Rental Housing Programs Application Form. Pursuant to the application form, General Partner sought the reservation of \$d of low-income housing tax credits in connection with General Partner's development of a low-income housing project in City 3. The application provided that the proposed project would consist of e three-story residential buildings to be owned by Partnership.

By letter dated f, Agency notified General Partner of its approval of a reservation of \$d in

low-income housing tax credits from its b authority under section 42.

Prior to the commencement of construction, General Partner, in its capacity as general partner of Partnership, modified the site development plan to allow for either h one and two-story buildings rather than the e originally contemplated three-story buildings.

On g, Partnership and Agency entered in to a b low-income housing tax credit carryover

allocation agreement pursuant to *** section 42(h)(1)(F). Under the terms of the carryover allocation, Agency, based upon erroneous information inadvertently and unintentionally supplied to it by the developer, assigned a building identification number (BIN) to each of the e buildings originally contemplated to be built, and it allocated the \$d on a project basis with no specific amount allocated to any particular building, notwithstanding the fact that the project had been reconfigured to include h buildings rather than e. Thereafter, construction began. The intent of Partnership and General Partner was to change the number of BINs from e to h and allocate the credit reservation among the h buildings as determined in the revised site plan.

Between i, and j, each of the h constructed buildings were placed in service. On k, General Partner submitted to Agency various documents comprising General Partner's

low-income housing tax credit final cost certification for the project. In its submission, General Partner described a change to its application form filed with Agency, namely, that the number of residential buildings comprising the project had been increased from e to h.

In assembling its final cost certification to Agency, General Partner discovered the administrative error reflected in the Carryover Allocation Agreement, namely, Agency's assignment of only e BINs rather than h BINs and its allocation of tax credits among e buildings rather than the h buildings that actually were constructed. In accordance with the regulations promulgated under section 42(n), Agency, Partnership, and General Partner seek to correct this administrative error by amending the carryover allocation to include h BINs rather than e BINs to reflect that the project consists of h buildings rather than e buildings.

Agency represents that the fact that the project will have h buildings instead of e buildings does not affect the amount of housing credit dollar amount allocated to the project nor the ranking of the project in Agency's b allocation round, nor any other aspect of the carryover allocation for the project.

RULING REQUESTED

It is respectfully requested that the following ruling be issued:

That Agency be permitted to amend the b project-based carryover allocation to include l

additional BINs to the e BINs originally assigned to the project representing the l buildings which were constructed in excess of the e buildings originally contemplated, and which are currently part of the project.

As required under section 1.42-13(b)(3)(v), Agency, Partnership, and General Partner 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 creates 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.

General Partner committed an administrative omission when it failed to inform Agency that the composition of the buildings in the project had changed. We do not believe that this error was a misinterpretation of the applicable rules and regulations under section 42. This omission created a document (ie., carryover allocation) that

inaccurately reflects the intent of Agency, Partnership, and General Partner at the time the document was originally completed. The intent of Agency was to allocate the same amount of credit to the project, notwithstanding the number of 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 b 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 b 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 to a building or project. This correction would involve a numerical change to the credit amount allocated to the e buildings in the project that received BINs.

After applying the relevant law and regulations to the facts submitted and the representations set forth above, we rule as follows:

1. General Partner, on behalf of Partnership, committed an administrative omission when it failed to inform Agency at or before the time the carryover allocation was made that it had revised the project's site development plan to include I additional buildings;
2. Because of that administrative omission, the carryover allocation inaccurately reflects the intent of Agency, Partnership, and General Partner as of the time the carryover allocation was executed;
3. Agency, Partnership, and General Partner requested approval within a reasonable period of time after they became aware of the administrative error; and
4. Agency will issue BINs to the additional I buildings added to the project under the project's revised site development plan.

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

1. Amend the carryover allocation to include a BIN for each of the h buildings in the project. On the amended 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 carryover allocation to an amended Form 8610 and file the amended Form 8610. 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 credit under section 42.

This ruling is directed only to Agency, Partnership, and General Partner. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,

Susan Reaman

Chief, Branch 5

Office of the Assistant Chief Counsel (Passthroughs and Special Industries)