

Private Letter Ruling 199917023, IRC Section 42

UIL No. 42.14-01

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: 4/30/1999

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LEGEND:

Agency = ***

Department = ***

Taxpayer = ***

State A = ***

City B = ***

Corporation C = ***

Project = ***

a = ***

b = ***

c = ***

d = ***

e = ***

f = ***

g = ***

h = ***

i = ***

j = ***

k = ***

l = ***

m = ***

n = ***

o = ***

Dear ***

This letter responds to your letter of October 16, 1998, and subsequent letters, submitted by your and Taxpayer's authorized representatives, requesting a private 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.

Taxpayer and Agency represent that the facts are as follows: Taxpayer is a State A limited partnership that was formed to construct, develop, and operate the Project, a multi-family low income housing project in City B, pursuant to section 42. The general partner of the Taxpayer is Corporation C.

Agency is an agency of the Department. The Governor of State A assigned responsibility for the administration of the low-income housing tax credit program to the Department. Within the Department, the low-income housing tax credit project is administered by the Agency.

In connection with the development of the Project, Taxpayer made application for a reservation of low-income housing tax credits from Agency dated a. The Project consists of n multi-family building and a garage/carriage house unit in the rear, both of which share the same address. The application provided that there were m buildings containing a total of b units. The garage/carriage house is detached from the multi-family building and upon completion of rehabilitation will contain o low income units. Taxpayer also executed a binding agreement and election statement dated c, which provides that the Project had m buildings. The utilization affidavit dated d, which was provided to the Agency, indicated that there was n address, but did not specify the number of buildings. The Agency relied on the utilization affidavit in making its determination that there was only n building, and the carryover allocation of low-income housing tax credit that was issued by the Agency to the Project on e, assigned only n building identification number ("BIN") to the Project in error.

There has been no change in the site plan or design of the Project, and the Project contains the same number of units (b), the same number of low income units (f), the same mix of one, two, and three bedroom units as called for under the original plan, and each unit consists of the same square footage as provided in the original plan. The Project is expected to be completed by g. The Agency issued the carryover allocation in the amount of \$h per year to the Project based upon the Project's building plan of m buildings. Investor's counsel, upon its review of the tax credit documents, discovered in i that only n BIN had been issued to the Project in error. Soon after, Taxpayer was made aware that the carryover allocation had included only n BIN in error and in j, Taxpayer notified Agency that the error had occurred. On or about k, Taxpayer and Agency agreed that a letter ruling would be required.

In connection with the above statement of facts, Agency represents that: (1) it issued 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 m residential buildings rather than n would not have affected: (a) the amount of credit allocated to the Project, (b) the ranking of the Project in the Agency's l allocation round, or (c) any other aspect of the carryover allocation for the Project.

Agency and Taxpayer request the Internal Revenue Service to rule that Agency can amend the l carryover allocation agreement with Taxpayer to include a BIN for each of the m buildings in the Project.

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

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 any misinterpretation of the applicable rules and regulations under section 42.

In the present case, Agency committed an administrative error when the l carryover allocation failed to reference m 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., l carryover allocation) that did not accurately reflect the intent of Agency and Taxpayer 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 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 l 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 l carryover allocation is the credit allocating document.

Pursuant to section 1.42-13(b)(3)(iii), an Agency must obtain the Secretary's prior approval to correct 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 a building or project. In the present

case, the correction would involve a numerical change to the credit amount allocated to the n building that received a BIN.

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 issued n BIN, instead of m BIN(s), for the Project;
- 2) Because of that administrative error, the l carryover allocation inadvertently reflects the intent of Agency and Taxpayer, when the l carryover allocation was executed; [sic]
- 3) Agency will correct the administrative error within a reasonable period of time after Agency became aware of the administrative error; and
- 4) Agency will issue n additional BIN to accurately reflect that there are m buildings in the Project.

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

- 1) Amend the l carryover allocation to include a BIN for the n additional building in the Project and to allocate the appropriate amount of low-income housing tax credit to each of the m buildings in the Project, not exceeding \$h for the entire Project. The new BIN does not have to be in sequential order with the existing n BIN and the existing n BIN shall continue in effect. On the amended l 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 l carryover allocation to an amended Form 8610, Annual Low-income Housing Credit Agencies Report, for l, 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 costs included in the Project's eligible basis.

Under the power of attorney on file, we are sending copies of this ruling to Agency's authorized representative, to Taxpayer, and to Taxpayer'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,

Kathleen Reed

Senior Technician Reviewer, Branch 6

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