

Private Letter Ruling 199943033 - IRC Section 42

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Legend:

Partnership =

GP1 =

GP2 =

LP1 =

LP2 =

Agency =

Project =

State =

City =

a =

b =

c =

d =

e =

f =

g =

h =

k =

m =

n =

p =

r =

s =

Dear

This letter responds to your letter dated a, submitted on behalf of Agency and Partnership, requesting a letter ruling under § 42(n)(4) of the Internal Revenue Code and § 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 h for the purpose of developing land and constructing, owning, and operating a k unit residential rental project in City (the Project). Partnerships' general partners are GP1 and GP2, and its limited partners are LP1 and LP2. Partnership expects that all of the units in the Project will qualify for low-income housing credits pursuant to § 42.

On m, Partnership submitted an application to Agency for a reservation of g low-income housing credits in the amount of \$n. The application reflected a site plan calling for k units in d buildings. On p, the Project received a reservation letter from Agency tentatively reserving low-income housing credits in the amount of \$f for d buildings in the Project. On r, the Project received \$f in carryover allocation credits from Agency for d buildings.

Prior to the Carryover Allocation, the Project Architect, on b, prepared plans and specifications consisting of c residential buildings for the Project. The preparer of Partnership's Carryover Certification, unaware of the Architect's plans, submitted the Carryover Certification consisting of d buildings. The Project was completed

consisting of c buildings according to the plans and specifications of the architect.

After completing the Project, Partnership, in e, submitted a request for Forms 8609 for the Project to Agency. Upon receipt of a Tax Regulatory Agreement and Compliance Monitoring Agreement for the Project from Agency, Partnership's accountants discovered that there was a mismatch between the carryover allocation and the actual number of buildings. Shortly after discovery of the error, the general partners contacted Agency, and

Agency informed the general partners that a private letter ruling would be necessary to correct the administrative error.

As a result of this mistake, the number of 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.

Agency and Partnership, at the time of the g carryover allocation, intended for k units to be constructed in the Project. The existing building-by-building allocation pursuant to the carryover allocation does not allow Partnership to maximize the credits allocated to the Project and seriously affects the Project's financial feasibility. Thus, the g carryover allocation inaccurately reflects the intent of Agency and Partnership at the time the carryover allocation document was prepared.

At the time of the Carryover allocation, it was the intent of Agency and Partnership to maximize the credits allocated to the Project. The correction of the administrative error or omission will have no affect on the low-income housing credits allocated to the entire

Project. The correction, however, will affect the credits allocated to each building. Furthermore, the correction of the administrative error or omission will have no effect

on the housing credit ceiling under § 42(h)(3)(C) or on Agency's unused housing credit carryover that is assigned to the Secretary under § 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 § 42(h)(1)(F); (2) the number of buildings in the Project was not material to the carryover allocation for the Project; and (3) the fact that the Project had c residential buildings rather than d 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 g allocation round, or (c) any other aspect of the carryover allocation for the Project.

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

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

#### LAW AND ANALYSIS:

Under § 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 § 42.

In the present case, Partnership committed an administrative error when the g credit application referenced d buildings when the actual number of residential buildings was c. This error was not a misinterpretation of the applicable rules and regulations under § 42. However, this error did result in a document (i.e., g 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, the ranking of the Project in Agency's g allocation round, or any other aspect of the carryover allocation for the Project. Thus, a correctable administrative error occurred in this situation.

Under the represented facts, the g carryover 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 c buildings that properly 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 error when it failed to correctly identify the actual number of residential buildings in the Project in its g credit application to Agency;
2. Because of that administrative error, the g carryover allocation inaccurately reflects the intent of Agency and Partnership when the g carryover allocation was executed;
3. Agency and Partnership requested to correct the administrative error within a reasonable period of time after Agency became aware of the administrative error;
4. Agency will remove the s BINs that were assigned in error to accurately reflect that there are c residential buildings in the Project; and
5. Agency will allocate low-income housing tax credit to each of the c residential buildings in the Project, not exceeding \$f for the entire Project.

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

1. Amend the g carryover allocation to remove the s BINs erroneously assigned to the Project and to allocate the appropriate amount of low-income housing tax credit to each of the c residential buildings in the Project, not exceeding \$f for the entire Project. On the amended g carryover allocation, Agency should indicate that it is making the correction under § 1.42-13(b); and
2. Attach a copy of the amended g carryover allocation to an amended Form 8610, Annual Low-Income Housing Credit Agencies Report, for g, 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 § 42 or 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 a copy of this letter ruling to Partnership, Agency, and Agency'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,

Harold E. Burghart  
Assistant to the Chief, Branch 5  
Office of Assistant Chief Counsel (Passthroughs and Special Industries)