

Private Letter Ruling 200003022 - IRC Section 42

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Dear

This letter responds to your authorized representative's letter dated a and subsequent submission dated a on behalf of Partnership and Agency requesting a ruling under § 42(n) of the Internal Revenue Code and § 1.42-13(b) of the Income Tax Regulations to allow Partnership and Agency 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 the Partnership and the General Partner is located in City.

The relevant facts as represented in these submissions are set forth below.

FACTS:

Partnership was formed for the purpose of building, developing, owning and operating a b-unit apartment complex in City (the Project). All of the units in the Project are intended for occupancy as low-income units within the meaning of § 42(i)(3).

In the initial application for an allocation of credits for the Project submitted to Agency, an agency of the Commonwealth of k, the Project was described as

consisting of c buildings. The site plan for the Project was subsequently revised, but prior to Agency's reservation of credits to the Project to increase the number of buildings from c to d. Each building was to contain e residential units. Agency was notified of this change. Thereafter, the site plan for the Project was further revised to increase the number of buildings from d to f, to comply with the local zoning authority's interpretation for side and rear yard setback requirements. As a result, the site plan for the Project contemplates the construction of c buildings with e residential units each, and e buildings with g residential unit each. The applicant failed to notify Agency of this change to the site plan.

Agency issued a carryover allocation in the amount of \$h per year. In the carryover allocation, d BINs were assigned. At the time that the carryover allocation was awarded and at the time that Partnership received and executed the carryover allocation, Partnership did not appreciate the significance of the lack of a BIN for all f buildings in the Project. It was not until i that it was realized that the application and the carryover allocation should have reflected f buildings and not d buildings.

Agency represents that it intended to make a project-based allocation to the Project pursuant to §42(h)(1)(F) and that the number of buildings in the Project was not material either to its initial reservation of credits or to its subsequent carryover allocation of the credit reserved. Agency also represents that the fact that the Project has f buildings rather than d does not affect the amount of the housing credit dollar amount allocated to the Project, the ranking of the Project, Agency's requirements for allocations, or any other aspect of the carryover allocation for the Project.

RULING REQUESTED:

Partnership and Agency request the Service to rule that Agency can amend the carryover allocation to include a BIN for each of the f buildings in the Project.

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

LAW AND ANALYSIS:

Under § 42(n)(4) of the Code, 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) of the regulations 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 § 42.

Partnership committed an administrative error when it failed to inform Agency of the correct number of buildings in the Project at or before the time Agency issued the carryover allocation for the Project. We do not believe that this error was a misinterpretation of the applicable rules and regulations under § 42. This error created a document (i.e., carryover allocation) that inaccurately reflects the intent of Partnership and Agency 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 allocation round, nor any other aspect of the carryover allocation for the Project. Finally, it was not until j that it was realized that the application and the carryover allocation should have reflected f buildings and not d buildings. A request to correct this error was immediately filed following this discovery. Thus, a correctable administrative error occurred in this situation.

Under the represented facts, the 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 to a building or project. This correction would involve a numerical change to the credit amount allocated to one or all of the d buildings that initially received BINs.

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

1. Partnership committed an administrative error when it failed to inform Agency of the correct number of buildings in the Project;
2. Because of that administrative error, the carryover allocation inaccurately reflects the intent of Partnership and Agency at the time the carryover allocation was made;
3. Partnership and Agency requested approval within a reasonable period of time after they became aware of the administrative error; and
4. Agency may issue a BIN for each of the f buildings in the Project.

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

1. Amend the carryover allocation to include a BIN for each of the f buildings in the Project. On the amended carryover allocation, Agency should indicate that it is making the correction under §1.42-13(b), and
2. Attach a copy of the amended carryover allocation to an amended Form 8610, Annual Low-Income Housing Credit Agencies Report, and file the amended Form 8610 with the Service. When completing the amended Form 8610, Agency should follow the specific instructions on the Form8610 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 § 42.

In accordance with the power of attorney filed with the ruling 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,

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