

Private Letter Ruling 200005022 - IRC Section 42

Date: November 9, 1999

Release Date: 2/4/2000

Legend:

Partnership =

State =

County =

Project =

Agency =

Gen. Partner A =

Gen. Partner B =

Gen. Partner C =

Ltd. Partner A =

Ltd. Partner B =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

o =

p =

q =

r =

s =

t =

u =

v =

w =

x =

z =

Dear

This letter responds to your letter dated August 16, 1999, submitted on behalf of Agency and Partnership, requesting a private 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 tax credit dollar amounts.

Agency and Partnership represent that the facts are as follows:

FACTS:

Partnership was formed for the purpose of acquiring, constructing, developing, owning, and operating a a-unit low-income housing apartment complex known as Project. Partnership was organized as a State limited partnership on b. Partnership uses the accrual method of accounting and has a year-end of November 30. The original general partners of Partnership were Gen. Partner A and Gen. Partner B. The initial limited partner was Ltd. Partner A. Effective c, Ltd. Partner A withdrew as initial limited partner. Gen. Partner C was admitted as a general partner and Ltd.Partner B was admitted as a limited partner. Effective d, Gen. Partner A withdrew as a general partner.

On f, Gen. Partner A submitted an application to Agency for e credits for the Project. The Project was designed to consist of a residential units in g buildings. On h, Agency issued a reservation of e low-income housing tax credits in the amount of \$i. According to Partnership, an allocation of \$j was insufficient to bridge the equity gap. The Project needed approximately \$j in credits. Agency issued the carryover allocation of e credits on I in the amount of \$j. The carryover allocation agreement referenced the number of buildings as g and, thus, g building identification numbers(BINs) were issued for the Project. According to Agency and Partnership, Agency issued the e allocation principally as a mechanism for assuring expedited review and award of credits when the State's housing dollar ceiling for k became available.

In a letter dated rn, Agency requested that Partnership "reactivate" its application by submitting any revisions to the e application. By letter dated Q, Partnership notified Agency that no revisions were necessary and that Partnership was prepared to proceed on the basis of the e application. In a letter dated o, Partnership returned the e credits. Partnership received a k allocation pursuant to a k carryover allocation dated p in the amount of \$q. However, the k carryover allocation agreement referenced only one BIN for the Project. At that time, Partnership was under the impression that as the buildings were placed in service, Agency could take corrective action to issue Form 8609, "Low-Income Housing Credit Allocation Certification," with a BIN for each building.

Partnership proceeded to construct Project. However, during a blizzard in r, County was declared a major disaster area. As a result of the blizzard, only one building in the Project was placed in service by s. On t, Gen. Partner C sent a letter to the Internal Revenue Service regarding relief under Rev. Proc. 95-28, 1995-1 C.B. 704. By letter dated u, the Service wrote to Agency and informed Agency that Agency would not be precluded from issuing the relief requested. Agency informed Partnership that Agency would submit an amended Form 8610, "Annual Low-Income HousingCredit Agencies Report," simultaneously with issuing the Form 8609s for the Project. All of the buildings in the Project were placed in service by v.

On w, Partnership submitted a cost certification and breakdown of qualified basis to Agency. On x, Agency sent a letter to Partnership stating that in the course of reviewing the paperwork submitted in support of the request for the Form 8609s, Agency discovered that only one BIN for the Project had been issued.

In connection with the above statement of facts, Agency represents that: (1) it intended to issue g BINs to the project; (2) the number of buildings in the Project was not material to the carryover allocation for the Project; and (3) the fact that Agency issued only one BIN to the Project would not have affected: (a) the amount of credit allocated to the Project, (b) the ranking of the Project in Agency's k allocation round, or (c) any other aspect of the carryover allocation for the Project.

#### RULING REQUESTED:

Agency and Partnership request permission pursuant to section 42(n)(4) to correct the administrative error by amending the k carryover allocation to provide for the additional BINs. On the amended carryover allocation, Agency will indicate that it is making the correction under §1.42-13(b).

#### 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, Agency committed an administrative error when the e application for low-income housing tax credits that was the basis for the k allocation referenced g buildings but entered into a k carryover allocation agreement that referenced only one building. This error was not a misinterpretation of the applicable rules and regulations under § 42. However, as a result of this error, the k carryover allocation 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 fact that Agency issued only one BIN for 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 k 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 k 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 one building that properly received a BIN.

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

1. Partnership and Agency committed an administrative error when it failed to identify the actual number of residential buildings in the Project in the carryover allocation;
2. Because of that administrative error, the k carryover allocation inaccurately reflects the intent of Agency and Partnership when the k carryover allocation was executed;
3. Agency and Partnership requested to correct the administrative error within a reasonable period of time after becoming aware of the administrative error;
4. Agency will assign z additional BINs to accurately reflect that there are g residential buildings in the Project; and
5. Agency will allocate low-income housing tax credit to each of the g residential buildings in the Project, not exceeding \$<sub>q</sub> for the entire Project.

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

1. Amend the k carryover allocation to include BINs for the z additional buildings in the Project and to allocate the appropriate amount of low-income housing tax credit to each of the g buildings in the Project, not exceeding \$<sub>q</sub> for the entire Project. If possible, the new BINs should be in sequential order with the existing BIN and the existing BIN shall continue in effect. On the amended k carryover allocation, Agency should indicate that it is making the correction under § 1.42-13(b); and
2. Attach a copy of the amended k carryover allocation to an amended Form 8610, "Annual Low-Income Housing Credit Agencies Report," for k, 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 nor the validity of the Project's costs included in eligible basis.

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.

In accordance with the power of attorney on file, a copy of this letter is being sent to Partnership's authorized legal representative.

Sincerely yours,

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