

Revenue Code and § 1.42-13(b) of the Income Tax Regulations to correct an administrative error relating to an allocation of low income housing credit dollar amounts.

Agency is the State allocating entity for low-income housing tax credits under § 42. In Year 1, during a routine review by Agency staff, Agency discovered that it had over allocated Year 2 low-income housing tax credit dollar amounts by \$a. When Agency discovered the over allocation, the developments that received the Year 2 credits were already underway. Agency represents that it intended to allocate Year 2 credits appropriately to support the financial feasibility of those developments without exceeding the Year 2 State housing credit ceiling.

The over allocation occurred because Agency did not correctly track certain returned Year 2, Year 3, and Year 4 low-income housing tax credit dollar amounts. Although Agency had processes in place to track allocations and returns of credits, an error resulted in certain returned credits being double counted in Year 2. Thus, Agency believed it had more credits available to allocate in Year 2 than was actually available to State. Agency currently has an additional process in place designed to reduce the likelihood that this type of error will reoccur.

Agency requests a ruling granting approval to correct the administrative error that resulted in the over allocation of State's Year 2 housing credit ceiling by \$a. As required by § 1.42-13(b)(3)(v), Agency agrees to such conditions as the Secretary considers appropriate if the ruling request is granted.

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.

Under § 1.42-13(b)(3)(iii)(A), a state 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 affects the determination of any component of the housing credit ceiling under § 42(h)(3)(C).

The allocation of the Year 2 credits resulted in an over allocation of State's housing credit ceiling by \$a. This error did not result from a misinterpretation of the

applicable rules and regulations under § 42. Thus, a correctable administrative error occurred in this situation.

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

1. The Agency committed an administrative error when it made allocation of credits which resulted in an over allocation of State's Year 2 housing credit ceiling by \$a.

2. After Agency discovered that there was an administrative error, Agency attempted to correct the administrative error within a reasonable period of time.

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

1. Reduce the Agency's Year 6 housing credit ceiling by \$b. This amount represents the \$a in over-allocated § 42 credits from State's Year 2 housing credit ceiling, plus interest, compounded annually, and rounded to the nearest dollar. The interest is calculated as the average of the annual Federal mid-term rate and the annual Federal long-term rate under § 1274(d)(1) for Date, applied to the period including Year 1, Year 5, and Year 6; and

2. Reflect the \$b reduction of Agency's Year 6 housing credit ceiling on line 5b of the Year 6 Form 8610, Annual Low-Income Housing Credit Agencies Report. Agency should asterisk line 5b and briefly explain at the bottom of the Form 8610 that this line amount reflects the correction required by this letter ruling. When filed, a copy of this letter ruling must also be attached to the Year 6 Form 8610.

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.

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 any of the projects that received the Year 2 credit allocations qualify for low-income housing tax credits under § 42.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Nicole Cimino

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Enclosures (2)

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