

Private Letter Ruling 9437003, IRC Section 42

Full Text:

Date: June 8, 1994

Dear ***

This letter responds to your letter of February 4, 1994, and subsequent correspondence requesting a ruling under section 42(n) of the Internal Revenue Code and section 1.42-13 of the Income Tax Regulations.

FACTS:

The Agency and the Partnership have made the following representations.

The Partnership, as State A general partnership, is the developer and original owner of the Project, a low-income housing apartment complex located in City A that has a residential units and b "common area" unit.

The Project received a "reservation" of 1991 low-income housing tax credit dollar amounts (Credits) from the Agency under a "Credit Reservation Contract" dated t1 between the Partnership and the Agency. The Agency issued a carryover allocation of Credits (the Carryover Allocation) to the Project on t2. Under a "Transfer Agreement" entered into on t3, which was after t2, and approved by the Agency, the Partnership transferred all of its right, title, and interest in the Project to Transferee, a State A limited partnership. The Partnership's general partners are also the general partners of the Transferee.

At the time of application for Credits, the original site plan for the Project had c units in f buildings with d units in each building of the Project. By the time the Agency issued the Carryover Allocation, the plan had changed so that the Project consisted of e buildings, rather than f, with c units (the Revised Plan). The Revised Plan showed e residential buildings with b recreation, common area building. Thus, the number of residential units in the Project did not change under the Revised Plan. The Revised Plan was prepared prior to the Carryover Allocation date.

The Carryover Allocation had f Building Identification Numbers (BINs) assigned to the f originally contemplated buildings, BIN #1 and BIN #2. As of the Carryover Allocation date, the Agency did not know of the Revised Plan. The Partnership understood that the plan now included e buildings, rather than f, but it did not understand the significance of the lack of a BIN for all e buildings in the Project.

The Project was completed and all buildings were placed in service on or before t4, the date prescribed in section 42(h)(1)(E)(i).

On or before t4, the Agency executed e Forms 8609 with a BIN for each of the e buildings in the Project. The Agency is delaying the release of these forms until the Service confirms the appropriateness of assigning the three additional BINs to the buildings in the Project under the Revised Plan.

The Agency has also represented that it intended to make a project based allocation to the Project and that the number of buildings in the Project were not material to the Carryover Allocation for the Project. Therefore, the Agency represents that the fact the Project had e buildings instead of f buildings would not have affected (1) the amount of housing credit dollar amount allocated to the Project, (2) the ranking of the Project in the Agency's 1991 allocation round, or (3) any other aspect of the Carryover Allocation for the Project.

To correct the administrative errors or omissions committed regarding the allocation of Credits to the Project, the Agency has consented to comply with the conditions imposed by the Internal Revenue Service.

LAW AND ANALYSIS:

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 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 section 42.

The Partnership committed an omission by failing to inform the Agency that the composition of the buildings in the Project had changed under the Revised Plan. We do not believe that this omission was a misinterpretation of the applicable rules and regulations under section 42. This omission created an allocation document that did not reflect the intent of the Agency and the Partnership at the time they executed the Carryover Allocation. The Agency clearly intended to make a project based allocation; the carryover allocation document itself refers to the Project and not to a specific building in the Project, and the Partnership clearly intended to receive a project based allocation for the Project. Thus, a correctable administrative omission occurred in this situation.

Under the represented facts, the Carryover Allocation is the Credit allocating document, and the Form 8609 is an administrative document. Under section 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 a building or project. This correction would involve a numerical change to the Credit amount allocated for a project because the three additional buildings were not included in the

project-based Carryover Allocation. Thus, to correct this administrative omission, the Agency must obtain the Secretary's prior approval.

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

1. The Partnership committed an administrative omission when it failed to inform the Agency that the composition of the buildings in the Project had changed;
2. Because of that administrative omission, the Carryover Allocation inaccurately reflects the intent of the Agency and the partnership as of the time they executed the Carryover Allocation; and
3. The Agency will correct the administrative omission within a reasonable period of time after the Agency became aware of the administrative omission. Thus, it is appropriate for the Agency to issue BINs to the three buildings added to the Project under the Revised Plan. To correct this administrative omission, the Agency must do the following:

1. Amend the Carryover Allocation to include a BIN for each of the e buildings in the Project. The BINs for these buildings should be sequential. On the amended Carryover Allocation, the Agency should indicate that it is making the correction under section 1.42-13(b), and
2. Attach a copy of the amended Carryover Allocation to an amended Form 8610 and file the amended Form 8610. When completing the amended Form 8610, the 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 credit under section 42.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent.

Sincerely yours,

James Ranson

Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)