

Private Letter Ruling 9507003, IRC Section 42

Date: November 3, 1994

Dear \*\*\*

This letter responds to your letter dated July 1, 1994, requesting a ruling under section 42(n)(4) of the Internal Revenue Code and section 1.42-13(b) of the Income Tax Regulations.

FACTS:

The Agency and the Partnership have made the following representations.

The Partnership, a State A limited partnership, was formed to build, develop, own, and operate a a-unit apartment complex known as Project. Limited Partner is the limited partner of the Partnership.

The Partnership applied to the Agency for a 1991 low-income housing credit dollar amount (Credits). In the application for the Credit, the Partnership indicated that its total development cost was \$b and its estimated eligible basis was \$c. These estimated cost and basis amounts included a development fee of \$d. The Project involved new construction with federally subsidized financing. The Partnership requested a Credit of \$e.

On t1, the Agency issued a "Reservation Letter" reserving \$f of Credit for the Project. On t2, the Partnership submitted "a low- income housing credit certification of basis expenditure" (the Carryover Certificate) that showed it would have a basis in the Project of at least \$g by December 31, 1991. The total anticipated basis in the Project on the Carryover Certificate was \$h because Partnership's accountants inadvertently omitted the development fee of \$i from their calculation of the Project's reasonably anticipated basis. On December 23, 1991, Agency issued a carryover allocation (the Carryover Allocation) of 1991 Credit of \$j for the Project to Partnership.

General Partner contends that he noted the lower Credit amount when he received the Carryover Allocation. According to the General Partner, he immediately (1) called the Agency, (2) on the Agency's instruction, made interlineations on the Carryover Allocation to show a corrected reasonably anticipated basis of \$k and a recomputed Credit of \$f, (3) initialed and dated each interlineation, and (4) sent the revised Carryover Allocation to the Agency via facsimile transmission on t3. On that same date, General Partner obtained from the Partnership's accountants a revised "low-income housing credit certification of basis expenditure" showing a corrected reasonable expected total basis of \$l.

The Agency, however, has no record of either the phone call or of having received the revised Carryover Allocation in t4. Instead, the Agency's records indicate that it was first

notified that the Carryover Allocation was incorrect on t5, and that it first received the amended Carryover Allocation on t6: Accordingly, the Agency treated only \$j of Credit as having been allocated to the Project.

Construction of the Project was completed and each building in the Project was placed in service before the end of 1992. On t7, the Partnership submitted a "placed in service application" and a certification of actual costs and opinion on eligible basis (the Cost Certification) for the Project that show total actual costs of \$m and a total eligible basis of \$n. Total actual costs in the Cost Certification included a developer's fee for \$i.

On t8, the Agency sent to the Partnership a land use restrictive covenant for the Project for execution by the General Partner. The General Partner executed the Restrictive Covenant without noticing that it reflected an allocation of Credit for \$j and then had the restrictive covenant recorded and returned to the Agency.

On t9, the Agency issued a Form 8609 for each of the six buildings in the Project. The Form 8609s show a total Credit for the Project of \$j. The specific Credit amount for each building is as follows:

Building	Building Identification Number	Credit Amount
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Building A	BIN #1	\$o
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Building B	BIN #2	\$p
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Building C	BIN #3	\$p
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Building D	BIN #4	\$p
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Building E	BIN #5	\$p
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Building F	BIN #6	\$p
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Total		\$j
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The General Partner discover[ed] the error when he received the Form 8609s for the Project in t10. On discovering the error, he immediately called the Agency. The General Partner also prepared a letter dated as of t11, which summarized the events that led to the erroneous allocation.

In t12 tax counsel for Partnership concluded that the situation required the parties to seek permission from the Internal Revenue Service to correct an administrative error. The Agency agreed.

LAW AND ANALYSIS:

Under section 42(n)(4), state and local housing credit agencies (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.

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 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 to a project. Thus, to correct the administrative error at issue, the Agency must obtain the Secretary's prior approval. To obtain the Secretary's approval under section 1.42-13(b)(3)(iii), an agency, or the agency and the affected taxpayer, must agree to the conditions the Secretary considers appropriate.

The Partnership's accountants committed an error by failing to include the development fee in the Project's reasonably anticipated basis on the Carryover Certification submitted to the Agency. We do not believe that this error was a misinterpretation of the applicable rules and regulations of section 42. Further, this error created an allocation document, the Carryover Allocation, that did not accurately reflect the intent of the Agency and the Partnership when they executed the Carryover Allocation. Because the "Reservation Letter" showed a Credit amount of \$f, we believe that the Agency intended to make an allocation based on the total cost of the Project, including the development fee.

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 error when its accountants failed to include the development fee in the Project's reasonably anticipated basis when submitting the Carryover Certification to the Agency;
2. Because of the administrative error, the Carryover Allocation inaccurately reflects the intent of the Agency and the Partnership at the time they executed the Carryover Allocation; and
3. The Agency will correct the administrative error within a reasonable period of time after it became aware of the administrative error.

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

1. Issue an additional Form 8609 for each building in the Project (the 1994 Form 8609s) so that the total Credit amount available for the Project – the sum of the amounts shown

on the Carryover Allocation and the 1994 Form 8609s – is based on the Project's actual costs. (Thus, each building in the Project should have two Form 8609s.)

2. Reduce its 1994 State housing credit ceiling under section 1.42-14(a) by the total amount shown on the 1994 Form 8609s.

The Secretary places the following condition on the Partnership:

The Partnership must begin the credit period in 1994 for the Credit amount shown on the 1994 Form 8609s.

Thus, the buildings in the Project will have a credit period for the Credit allocated on the Carryover Allocation and another credit period for the amount on the 1994 Form 8609s.

If the Agency fails to follow the instructions or the Partnership fails to obey the condition, this ruling is void.

Under the power of attorney on file, we are sending a copy of this ruling to the Partnership's authorized representative.

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,

BARBARA B. WALKER

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Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)