

Private Letter Ruling 9538011, IRC Section 42

Date: June 15, 1995

Dear ***

This is in response to your letter April 19, 1995, requesting a private letter ruling requesting approval under section 1.42-13 of the Income Tax Regulations to correct an administrative error involving the number of buildings included in a low-income housing project.

The Partnership is a State A Limited Partnership with Partner H as the general partner. The general partner is a S corporation owned by the Owners I. Each of the Owners I owns 50 percent of Partner H. The Partnership and Partner H use the accrual accounting method and their annual accounting periods are based on the calendar year. The IRS District Office that will have examination jurisdiction over the Partnership is City K.

The Partnership is the original owner of Project L. Project L is an elderly low-income housing apartment complex located in City N with g residential units and common area facilities. The project received a reservation of 1993 low-income housing credit dollar amounts in the amount of a from Agency M under a credit reservation contract dated b, between the Partnership and Agency M. Agency M issued a carryover allocation of c to Project L on d. The Forms 8609 were issued by Agency M on e for the placed in service credit of f.

In the development stage of the Project, the preliminary site plan called for g units with a distribution of i units each in j buildings. The prototype that had been used in the development of several other projects developed by Partner H used the same combination of buildings and units. The final site plan was created for g units consisting of k units each in l buildings due to more favorable topographical conditions found at the site. The final plan contained the same number of g units but they were distributed over l buildings instead of j buildings.

At the time the initial application for housing credit dollar amounts was prepared, an administrative error was made. The number of buildings that was captured on the application was taken from the preliminary site plan by mistake and was inadvertently carried from the application for housing credit dollar amounts stage through Form 8609 stage. Therefore, the carryover allocation had assigned j Building Identification Numbers (BINS) to the j originally contemplated buildings. Project L was completed and all buildings were placed in service on m.

The placed in service application was submitted by the general partner on n and Agency M executed j Forms 8609 with the BIN for j buildings as was previously issued on the carryover allocation. These executed Forms 8609 have been delivered to the Partnership by Agency M and the administrative error was not discovered until a CPA prepared the Partnership's tax returns for o in p. Upon discovering the mistake, the CPA immediately

reported it to Partner H who in turn immediately contacted Agency M to advise them of the problem.

Section 38(a) of the Code provides for a general business credit against tax that includes the amount of the current year business credit.

Section 38(b)(5) provides that the amount of the current year business credit includes the low-income housing credit determined under section 42(a). The low-income housing credit that may be claimed in any year is subject to the general business tax credit limitation of section 38(c).

Section 42(a) of the Code provides that, for section 38 purposes, the amount of the low-income housing credit determined under section 42 for any taxable year in the credit period shall be an amount equal to the "applicable percentage" of the qualified basis of each qualified low-income building.

Section 42(n) of the Code provides that the Secretary of the Treasury shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations providing the opportunity for housing credit agencies to correct administrative errors and omissions with respect to allocations and record keeping within a reasonable period after their discovery, taking into account the availability of regulations and other administrative guidance from the Secretary.

Section 1.42-13 of the Income Tax Regulations provides guidance to housing credit agencies' concerning correction of administrative errors and omissions.

Section 1.42-13(b)(2) defines an administrative error as a mistake that results in a document that inaccurately reflects the intent of the housing 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 housing agency and the affected taxpayer at the time the document is originally completed. Administrative errors and omissions described in this paragraph include the following: (i) A mathematical error; (ii) An entry on a document that is inconsistent with another entry on the same or another document regarding the same property, or taxpayer, (iii) A failure in tracking the housing credit dollar amount an Agency has allocated (or that remains to be allocated) in the current calendar year (e.g., a failure to include in its State housing credit ceiling a previously allocated credit dollar amount that has been returned by a taxpayer); (iv) An omission of information that is required on a document; and (v) Any other type of error or omission identified by guidance published in the Internal Revenue Bulletin as an administrative error or omission. Section 1.42-13(b)(3)(iii) provides that an agency must obtain the Secretary of the Treasury's prior approval to correct an administrative error or omission, as described in paragraph (b)(2) of this section, if the correction is not made before the close of the calendar year of the error or omission and the correction – (A) Is a numerical change to the housing credit dollar amount allocated for the building or project; (B) Affects the determination of any component of the State's housing credit ceiling under

section 42(h)(3)(C); (C) Affects the State's unused housing credit carryover that is assigned to the Secretary under section 42(h)(3)(D).

To obtain the Secretary's approval under paragraph (b)(3)(iii) of this section, an Agency must submit a request for the Secretary's approval within a reasonable period after discovering the administrative error or omission, and must agree to any conditions that may be required by the Secretary.

When requesting the Secretary's approval, the Agency, or the Agency and the affected taxpayer, must file an application containing the following information – (A) The name, address, and identification number of each affected taxpayer; (B) The Building Identification Number (B.I.N.) and address of each building or project affected by the administrative error or omission; (C) A statement explaining the administrative error or omission and the intent of the Agency, or of the Agency and the affected taxpayer, when the document was originally completed; (D) Copies of any supporting documentation; (E) A statement explaining the effect, if any, that a correction of the administrative error or omission would have on the housing credit dollar amount allocated for any building or project; and (F) A statement explaining the effect, if any, that a correction of the administrative error or omission would have on the determination of the components of the State's housing credit ceiling under section 42(h)(3)(C) or on the State's unused housing credit carryover that is assigned to the Secretary under section 42(h)(3)(D).

Agency M has represented to the Service that the number of buildings would not have affected the ranking of the application or the feasible credit amount. Further, since Agency M made a project- based allocation, there will be no change in the allocation amount to the project. By including the g building, the credit amount for each of the j other buildings shall be reduced to accommodate the change. In addition, a correction of the administrative error would have no effect on the state's housing credit ceiling.

Based upon these representations, the Service will allow Agency M to correct this administrative error under the authority of section 1.42-13(b)(3)(iii). Agency M must amend the carryover allocation to include a BIN for each of the l buildings in Project L. In addition, Agency M must obtain the Forms 8609 originally issued to the taxpayer and send the revoked 8609s to the Service attached to a Form 8823. Agency M must also issue new 8609s and attach these to an amended Form 8610.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or titled as precedent. This ruling does not address the application of any other provision of the Code or regulations to the transaction, other than those specifically mentioned above.

Sincerely yours,

JAMES F. RANSON

Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)