

Private Letter Ruling 9602007, IRC Section 42

Date: September 27, 1995

Dear ***

[1] This letter responds to your letter of June 1, 1995, on behalf of Agency and Partnership requesting a ruling under section 42(n) of the Internal Revenue Code and section 1.42-13 of the Income Tax Regulations to allow Agency and Partnership to correct an administrative error in an allocation of low-income housing credit dollar amounts (Credits).

FACTS:

[2] Agency and Partnership have made the following representations.

[3] As to both Agency and Partnership: its annual accounting period is the calendar year, its overall method of accounting for maintaining its accounting books and filing its federal income tax returns is the accrual method.

[4] The location of the District Office of the Internal Revenue Service that has or will have examination jurisdiction over all returns filed by Agency is City 1. The location of the District Office of the Internal Revenue Service that has or will have examination jurisdiction over all returns filed by the Partnership is City 2.

[5] Agency develops and administers financing programs for affordable housing through public/private partnerships with lenders, developers, nonprofit organizations and government. It is the agency in State 1 that administers the section 42 housing tax credit program. Partnership is a State 1 limited partnership formed for the purpose of developing and owning Project, a section 42 housing tax credit project in City 3.

[6] As set forth more fully below, in calendar year b, Agency issued a Form 8609, Low-Income Housing Credit Allocation Certification, in connection with building R, one of the buildings in Project. Due to a mathematical and clerical error, the Form 8609 set forth incorrect amounts as "maximum qualified basis" and "maximum housing credit dollar amount allowable." The amounts set forth on the Form 8609 did not reflect the intent of Agency or Partnership. The error was discovered by Agency on c. Agency and Partnership wish to refile Form 8609 pursuant to Treas. Reg. 1.42-13(b)(3)(ii). 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. Reg. 1.42-13(b)(3)(iii).

[7] Project is located at Project Address. Project consists of d buildings, designated as buildings C-R, with a total of e units of new construction. Twenty-five percent (25%) of the total units are set aside for tenants whose income does not exceed forty percent (40%) of the area median gross income and seventy-five percent (75%) of the units are set aside

for tenants whose income does not exceed sixty percent (60%) of the area median gross income.

[8] An application for section 42 tax credits for Project was filed with Agency by Developer in f. The ownership of Project was transferred to Partnership on g. Pursuant to a Credit Reservation Contract dated h, and a Credit Reservation Contract Amendment dated as of i, Agency reserved a maximum credit for Project of j. Carryover allocations (Project-based allocations) for that same maximum amount were made in k pursuant to Carryover Allocation Agreements dated l and i.

[9] m of the d buildings in Project, buildings C through F, were placed in service in o. Agency made final allocation of tax credits for those buildings totaling \$p. After the final allocation of tax credits to buildings C thorough [sic] F, the remaining portion of the project-based allocations for Project (i.e., building R) was \$g (i.e., \$j less \$s).

[10] The t building in Project, building R, was placed in service in b. As a consequence of a mathematical and clerical error, Agency staff calculated the remaining available credit for this building as \$u rather than \$g. Consequently, Agency filed Form 8609 for building R reflecting an allocated credit amount of \$u and identifying the maximum qualified basis as \$v. On c, Agency was notified by Partnership of the error and after consultation with the general partner of Partnership and reviewing relevant documents, Agency agreed that an error had been made. Agency intended to allocate to building R all of the credit remaining in the project- based allocation as long as the amount was supported by building R's maximum qualified basis and did not exceed an amount necessary to assure Project's feasibility under section 42(m)(2). At the time Form 8609 was issued to building R, building R did, in fact, have enough qualified basis to support \$g in credit, and this amount did not exceed an amount necessary to assure Project's feasibility under section 42(m)(2). But for the clerical error, Agency would have issued a Form 8609 to building R reflecting a "maximum housing credit dollar amount allowable" on line 1b of \$g and a "maximum qualified basis" on line 3a of \$w.

RULING REQUESTED:

[11] Agency and Partnership request the Service to rule that Agency can refile Form 8609 for building R of Project correcting the amount of the "maximum housing credit dollar amount allowable" on line 1b from \$u to \$g and correcting the "maximum qualified basis" on line 3a from \$v to \$w.

[12] As required under section 1.42-13(b)(3)(v) of the regulations, Agency and Partnership hereby agree to such conditions as the Secretary considers appropriate if the above ruling request is granted.

LAW AND ANALYSIS:

[13] Under section 42(n)(4) of the Code, 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) of the regulations 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.

[14] Agency committed a mathematical error by incorrectly calculating the credit remaining in Project (after having made allocations to all the buildings in Project except building R) as being \$u when, in fact, the correct amount was \$g. The incorrect amount, believed by Agency to be all the credit remaining from the k project-based carryover allocations, was reflected on the Form 8609 that was issued to building R. We do not believe that this error was a misinterpretation of the applicable rules and regulations under section 42. This error created a document (i.e., Form 8609) that did not reflect the intent of Agency at the time the document was originally completed. The intent of Agency was to allocate to building R all of the credit remaining from the k project-based carryover allocations if this amount was supported by the building's maximum qualified basis and did not exceed an amount necessary to assure Project's feasibility under section 42(m)(2). The building's maximum qualified basis was sufficient to support an allocation of \$g, and this amount did not exceed an amount necessary to assure Project's feasibility under section 42(m)(2). Thus, a correctable administrative error occurred in this situation.

[15] Under the represented facts, the k project-based carryover allocations are the credit allocating documents, and the Form 8609 issued to building R 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 to building R because the amount on line 1b of Form 8609 for building R does not reflect the amount of credit that Agency intended to allocate to building R.

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

1. Agency committed an administrative error when it failed to correctly calculate the credit remaining from the k project-based carryover allocations after having made allocations to all the buildings in Project except building R;
2. Because of that administrative error, the Form 8609 inaccurately reflects the intent of Agency as of the time the Form 8609 was executed; and
3. Agency will correct the administrative error within a reasonable period of time after Agency became aware of the administrative error.

[17] Thus, it is appropriate for Agency to refile a new Form 8609 for building R that corrects the amount of the "maximum housing credit dollar amount allowable" on line 1b from \$u to \$g, and correcting the "maximum qualified basis" on line 3a from \$v to \$w.

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

1. Reissue Form 8609 for building R that corrects lines 1b and line 3a in a manner consistent with this ruling. On the reissued Form 8609, Agency should indicate that it is making the correction under section 1.42-13(b), and
2. Attach a copy of the reissued Form 8609 to an amended Form 8610 and file the amended Form 8610. When completing the amended Form 8610, Agency should follow the specific instructions on the Form 8610 under the heading "Amended Reports."

[19] 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 Project qualifies for the low-income housing credit under section 42, or whether the corrected amounts on Form 8609 accurately reflect the basis of Project.

[20] 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)