

Private Letter Ruling 9609028, IRC Section 42

Reference(s): Code Sec. 42;

The Service has ruled that a state agency responsible for allocating low-income housing credits may correct an administrative error concerning a partnership's credit.

Full Text:

This responds to your letter dated July 11, 1995, and subsequent correspondence, requesting a ruling on behalf of Agency and Partnership under section 42(n) of the Internal Revenue Code and section 1.42-13 of the Income Tax Regulations.

Agency and Partnership have made the following representations.

Partnership was formed to purchase, rehabilitate, and operate the Project. The Project is an apartment complex in City A consisting of g buildings and n units. In a, Partnership submitted to Agency an application to review the Project for financial feasibility and viability as a qualified low-income housing project. In the application, Partnership stated a total development cost for the Project of \$f. Included in the application was the total estimated development cost of the Project, which included a builder guarantee fund amount, but not a developer's fee.

[4] Shortly after a, Partnership informed Agency of its intention to incorporate a developer's profit into the development cost budget of the Project. Agency and Partnership agreed that an m percent developer's fee would be allowable as an addition to the costs submitted with the original application. The inclusion of the developer's fee and other adjustments to the original application resulted in a revised estimated total development cost for the Project of \$h.

[5] In b, Partnership submitted to Agency a "Schedule of Project Costs and Eligible Basis

Agreed-Upon Procedures Report" (the Initial Cost Certification). The Initial Cost Certification reflected total Project costs of \$o and identified a developer's fee of \$p. This figure, however, was not the correct developer's fee, and should have been described as the builder guarantee fund amount. Moreover, the m percent developer's fee was inadvertently omitted from the Initial Cost Certification. As a result of these errors, the Initial Cost Certification underestimated Project costs by \$r. Agency used the Initial Cost Certification in its initial feasibility review to arrive at a final housing credit dollar amount needed of \$s, and to issue Forms 8609 for the buildings in the Project.

Agency and Partnership have represented that more than 50 percent of the Project was financed with the proceeds of tax-exempt bonds.

In late c or early d, when Partnership learned of the omission of the developer's fee, Partnership informed Agency of the error. By e, Partnership submitted to Agency a

revised cost certification reflecting all of the appropriate costs (the Revised Cost Certification). Based on the Revised Cost Certification, Agency calculated a final housing credit dollar amount needed of t. After a determination of the credit supportable by the eligible basis included in the Revised Cost Certification, Agency has indicated a final housing credit dollar amount allowable of \$v. Agency and Partnership have represented that the omission of the developer's fee from the Initial Cost Certification was an inadvertent error. They have also represented that the Initial Cost Certification did not reflect the intent of Agency and Partnership to allocate a housing credit dollar amount that reflected all project costs, including the developer's fee.

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 does not include a misinterpretation of the applicable rule and regulations under section 42.

[9] Section 42(h)(1) provides that the amount of the credit determined under section 42 for any taxable year for any building should not exceed the housing credit dollar amount allocated to the building. Section 42(h)(4)(A) provides that section 42(h)(1) shall not apply to the portion of any credit allowable under section 42(a) that is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under section 103 if the obligation is taken into account under the volume cap provisions of section 146, and principal payments on the bond financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide the financing. Section 42(h)(4)(B) provides that for purposes of section 42(h)(4)(A), if 50 percent or more of the aggregate basis of any building and land on which the building is located is financed by an obligation described in section 42(h)(4)(A), section 42(h)(1) shall not apply to any portion of the credit allowable under section 42(a) for that building.

[10] Partnership committed an administrative error by failing to include the developer's fee from the Initial Cost Certification used by Agency to arrive at the final housing credit dollar amount of \$s. We do not believe that this error was a misinterpretation of the applicable rules and regulations of section 42. Further, this error created documents, Forms 8609, that did not accurately reflect the intent of Agency and Partnership when Agency issued the forms. Based on documents submitted and representations made, we believe that Agency intended to make an allocation based on the total cost of the Project, including the developer's fee.

[11] After applying the relevant law and regulations to the facts submitted and the representations made, we rule that: (1) Partnership committed an administrative error when it failed to include the developer's fee on the Initial Cost Certification when it submitted that certification to Agency; (2) due to that administrative error, Agency issued

Forms 8609 that inaccurately reflected the intent of Agency and Partnership when the forms were completed; and (3) Agency will make corrections to account for the administrative error within a reasonable period of time after Agency became aware of the administrative error.

Agency must complete and issue an additional Form 8609 for each building in the Project with the original BIN reflecting the additional housing credit dollar amount allocated to that building to correct the administrative error of Partnership.

The Secretary places the following condition on Partnership:

Partnership may not claim the additional credit before its 1995 taxable year.

[15] Because more than 50 percent of the Project was financed with the proceeds of tax-exempt bonds and the credit limitation of section 42(h)(1) did not apply to the buildings in the Project, Agency is not required to reduce its 1995 state housing credit ceiling under section 42(h)(1).

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

[17] No opinion is expressed or implied regarding the application of any other provision of the Code or regulations. Specifically, we express no opinion whether the Project qualifies for the low-income housing credit under section 42.

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

Pursuant to the power of attorney on file with this office, we are forwarding a copy of this letter to your authorized representative.