

Private Letter Ruling 9701014, IRC Section 42

The Service has ruled that an agency may correct an administrative error in a carryover allocation pertaining to a low- income housing credit.

Date: September 30, 1996

Dear ***

This responds to your letter dated November 26, 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 build, develop, own, and operate the Project, a c unit apartment complex to be located in City. The Project originally was designed to consist of c residential units in d buildings. Partnership intended to rent 100 percent of the units to low-income tenants. On b, Partnership submitted to Agency an application for low-income housing tax credits for e (the "Credit Application"). The Credit Application reflected the original design of the Project and specified that the eligible basis of the Project would be \$f. Because Partnership intended to rent all of the units in the Project to qualified low-income tenants, the Credit Application specified that the qualified basis of the Project would also be \$f. On h, Agency issued a reserve notice, reserving credit for the Project in the amount of \$g (the "Credit Reservation").

On j, Partnership notified the architect of the Project that the Project should consist of k

buildings, rather than d buildings. On m, Partnership submitted a low-income housing credit certification of basis expenditure (the "Carryover Certification") to Agency. The Carryover Certification showed that Partnership would have an accumulated basis in the Project as of n, equal to approximately o percent of the reasonable anticipated total basis of the Project. Neither the Carryover Certification nor any other material submitted to Agency at that time indicated that the total number of buildings in the Project had changed.

Agency issued a carryover allocation of e tax credit authority on m, for \$p per year (the

"Carryover Allocation"). In the Carryover Allocation, d BINs were assigned to the d originally contemplated buildings. This was because the Credit Application indicated that the Project consisted of d buildings and Agency was not informed of the change in the number of buildings prior to the issue date of the Carryover Allocation. The Project was completed and all buildings were placed in service on or before u. On v, Partnership submitted cost certification and placed-in-service documents to Agency. Agency issued d Forms 8609 for the d buildings contemplated in the original design on w.

During the preparation of its x tax return, Partnership realized that an administrative error or omission had occurred. Specifically, when Partnership's accountant began preparing

Partnership's tax return in early y, the accountant noticed that Partnership did not have its

Forms 8609 for the buildings in the Project. Partnership applied for and received an extension of time to z, to file its return. When it became apparent that the Forms 8609 would not be issued before Partnership's extended due date for filing its return, Partnership applied for another extension of time until bb, to file the return.

Partnership's accountant received the forms and completed Partnership's tax return. During this time, the accountant discovered that the Forms 8609 were issued for only d buildings rather than k buildings, and communicated this fact to Partnership. Because the aggregate amount of tax credits was the same for either d or k buildings, Partnership did not realize that an error had been made until the accountant informed Partnership of the error.

Immediately thereafter, Partnership's accountant began to explore remedies for correcting the administrative error. Partnership's accountant began discussions with a representative of Agency about the appropriate procedure to correct the error. On cc, Agency sent a letter to Partnership's accountant declining to correct the administrative error without the prior consent of the Secretary, inviting Partnership to contact Agency if it wished to seek a ruling from the Service granting permission to correct the administrative error. On dd, the accountant sent a letter to Agency questioning Agency's decision not to correct the administrative error and requesting additional information about the rationale underlying the decision.

During the remainder of ee and early ff, Partnership communicated with Law Firm 1 about the possibility of obtaining a ruling from the Service granting permission to correct the administrative error. On gg, Law Firm 1 contacted Law Firm 2 about representing Partnership in this matter. Law Firm 2 agreed to represent Partnership in seeking approval to correct the administrative error. Law Firm 1 assembled the relevant information regarding the history of the transaction and the administrative error, and forwarded it to Law Firm 2 on hh.

Law Firm 2 then drafted a request to the Service for permission to correct the administrative error, and submitted it to Agency for review and approval on jj. After reviewing the request, Agency informed Partnership and Law Firm 2 that Agency's counsel, Law Firm 3, needed to be involved in drafting and submitting the ruling request as a matter of Agency policy. Agency then forwarded the request to Law Firm 3 for review. On kk, Law Firm 3 returned the draft to Law Firm 2 for completion.

To complete the ruling request, Law Firm 2 requested and obtained additional information from Partnership. The revised ruling request was returned to Law Firm 3 for additional review. The request was forwarded to Agency for its final review on mm.

Agency has made the following representations. First, Agency intended to make a project-based allocation of low-income housing credits to Project. Second, the number of buildings in the Project was not material to the Carryover Allocation for the Project. Third, the fact that the Project had k buildings rather than d buildings would not have affected the amount of credit allocated to the Project, the ranking of the Project in Agency's e allocation round, or any other aspect of the Carryover Allocation for the Project.

Agency and Partnership request permission under section 42(n) to correct the administrative error described in this letter by amending the Carryover Allocation to include a BIN for each of the k buildings in the project and attaching a copy of the amended Carryover Allocation to an amended Form 8610.

As required under section 1.42-13(b)(3)(v), Agency has agreed to the conditions the Secretary considers appropriate if the above ruling request is granted.

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 results in 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.

Partnership committed an administrative error by failing to inform Agency before the carryover allocation was issued that the number of buildings in the project had changed. We do not believe that this error was a misinterpretation of the applicable rules and regulations under 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 and number of buildings of the Project. Thus, a correctable administrative error occurred in this situation.

Under the represented facts, the Carryover Allocation is the credit-allocating document, and 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 to a building or project. This correction would involve a numerical change to the credit amount allocated to the buildings in the Project because the additional buildings were not included in the project-based Carryover Allocation. Thus, to correct this administrative error, Agency must obtain the Secretary's prior approval.

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 inform Agency that the number of buildings in the Project had changed from d to k;
- 2) Because of the administrative error, the Carryover Allocation inaccurately reflects the intent of Agency and Partnership when the Carryover Allocation was executed; and
- 3) Agency will correct the administrative error within a reasonable period of time after it became aware of the error.

To correct these administrative errors, Agency must:

1. Retrieve all d of the Forms 8609 for the Project previously sent to Partnership.
2. File a Form 8823 for each of the d Forms 8609 issued for the Project and indicate that each BIN is no longer valid because of a correction made under section 1.42-13.
3. File a Form 8610 with the amended box checked and an attached copy of the corrected Carryover Allocation.
4. Complete and issue a new Form 8609 for each of the k residential rental buildings. Each new Form 8609 should: (i) have a BIN for the corresponding residential rental building, (ii) reflect the correct Credit for each residential rental building, and (iii) indicate at the top that it reflects a correction made under section 1.42-13.

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.

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.

Sincerely yours,

BARBARA B. WALKER

Assistant to the Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)