

Private Letter Ruling 9711007, 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: December 6, 1996

Dear ***

This letter is in response to your letter of June 4, 1996, and subsequent correspondence submitted by your authorized representative on behalf of the Agency and the Partnerships requesting a private letter ruling under section 42(n) of the Internal Revenue Code and section 1.42-13 of the Income Tax Regulations. The Agency and the Partnerships have made the following representations.

FACTS:

Partnership A and Partnership B were organized on a as State D limited partnerships, under the relevant provisions of State D partnership law. Partnership A was formed to acquire, develop, and operate Project E and Partnership B was formed to acquire, develop, and operate Project F. Both projects are low-income housing apartment complexes located in City D.

Project E consists of b residential buildings and c multi- purpose buildings, and Project F consists of d residential buildings and e multi-purpose buildings. The State D Housing Agency ("Agency") issued f carryover allocations in the amount of g to Project E on j, and h to Project F on k. Forms 8609 have not been issued by the Agency for the projects.

In l, Company G, a member of the General Partner, prepared the initial application for low-income housing tax credits. At the time the initial application for the credit dollar amount was prepared, the original site plan for the projects called for m residential units to be distributed among n residential buildings and e multi-purpose buildings for Project E and for o residential units to be distributed among p residential units and e multipurpose buildings for Project F.

The plans for Project E and Project F were revised in g by the Architect, due to site restraints, including the designation of the property as wetlands and the inclusion of vaulted ceilings in all of the units. The revised site plan required more buildings than before because the units with vaulted ceilings could not be contained in two story buildings. The revised plan was prepared prior to the date the carryover allocation was entered into.

At the time the carryover allocation was mutually executed by the Agency and Partnerships A and B, the Partnerships were unaware of the significance of the number of building identification numbers issued for a project, although the Partnerships knew that the plan did include additional buildings to the original site plan. The Agency assigned

Building Identification Numbers ("BINs") as part of the carryover allocations based on the amount of originally contemplated buildings provided in the tax credit applications for the projects. The Agency designated r BINs for Project F (s residential buildings and e multi-purpose buildings totaling o units). For Project E, the Agency designated t BINs for Project E (n residential buildings and e multi-purpose buildings totaling m units). Due to the design changes, there are now actually d residential buildings and e multi-purpose buildings in Project F totaling o units. In Project E, there are now b residential buildings and c multi-purpose buildings totaling m units.

After the revised plan, Project E and Project F contain the same number of units and the same square footage per unit as originally indicated in the tax credit applications. In addition, the basis computed for each of the projects is the same as provided for in the respective carryover allocations, so that administrative correction would not effect the amount of credit dollars allocated to the projects.

The discrepancy in BINs was not discovered until the General Partner was preparing the cost certification to be submitted to the Agency in u. Upon discovering the error, the General Partner immediately contacted the Agency to advise them of the problem and to request that additional BINs be issued for the projects by administrative correction. The projects are complete and were placed in service on or before v.

The Agency intended to make a project based allocation to the projects when the original credit dollar amounts were allocated to Project E and Project F. Additionally, the number of buildings in the projects were not material to the execution of the carryover allocations by the Agency and the Partnerships. Therefore, the Agency represents that the fact that Project E had w buildings instead of t buildings and Project F had x buildings instead of r buildings would not have affected (i) the amount of housing credit dollars allocated to the project, (ii) the ranking of the projects in the Agency's y allocation round, or (iii) any other aspect of the carryover allocation for the projects. Additionally, the Agency advises that the corrections would have no effect on the determination of the components of the Agency's housing credit ceiling under section 42(h)(3)(C) or on the Agency's unused housing credit carryover that is assigned to the Secretary under section 42(h)(3)(D). To correct the administrative error and omissions committed regarding the allocation of credits to the projects, the Agency had agreed to comply with any conditions imposed by the Service.

DISCUSSION:

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 or omission does not include a misinterpretation of the applicable rules and regulations under section 42.

Partnership A and Partnership B committed an administrative error by failing to inform the Agency that the number of buildings had changed before the carryover allocation was issued. We do not believe that this error was a misinterpretation of the applicable rules and regulations under section 42. Further, this error created a carryover allocation that did not accurately reflect the intent of the Agency and the Partnerships when issued.

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

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

- 1) The Partnerships committed an administrative error by failing to inform the Agency that the composition of the buildings in the projects had changed under the revised plan.
- 2) Because of the administrative error, the carryover allocation inaccurately reflects the intent of the Agency and the Partnerships when the carryover allocation was executed.

To correct these administrative errors, the Agency must issue a BIN for each of the buildings in the projects. The BINs for these buildings should be sequential. If any outstanding BINs need to be cancelled, the Agency should file a Form 8823 indicating the obsolete numbers.

On the amended carryover allocation, the Agency should indicate that it is making the correction under section 1.42-13(b), and attach a copy of the amended carryover allocation to an amended Form 8610 and file the amended Form 8610. When completing the amended Form 8610, the Agency should follow the specific instructions on the Form 8610 under the headings "Amended Reports".

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 projects qualify 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,

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Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)