

Private Letter Ruling 9714014, 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 27, 1996

Dear \*\*\*

This letter responds to your authorized representative's letter dated a, and subsequent submissions, on behalf of Partnership and Agency requesting a ruling under section 42(n) of the Internal Revenue Code and section 1.42-13(b) of the Income Tax Regulations to allow Partnership and Agency to correct an administrative error or omission in an allocation of low-income housing credit dollar amounts. The Internal Revenue Service District Office that will have examination jurisdiction over the Partnership is located in City.

The relevant facts as represented in your submission is set forth below.

FACTS:

The building identification number (BIN) for the b building is c. The street addresses for the buildings have not been officially assigned by Town. The current address of the location of the apartment complex is Address.

Partnership, a State limited partnership, is the developer and owner of Project, a low-income housing apartment complex located in County.

Project received a "reservation" of d low-income credits from Agency under the "Reservation Agreement" dated e, between Partnership and Agency. Agency issued a carryover allocation of credits (the "carryover allocation") to Project on f.

At the time of application for credits, the original site plan for Project had g units in b building. During a review of the plan for Project, the County Zoning Administrator indicated that the b building was not in compliance with the local zoning ordinances. Although Project's architects did not agree with the Administrator, to comply with the local zoning ordinances, Project's architects changed Project from b building to h single-story buildings, meeting all of the local zoning ordinances. By the time Agency issued the carryover allocation, the plan had been changed as noted, to comply with local zoning ordinances, so Project consisted of h buildings, rather than b building, with i units, rather than g units (the "revised plan"). The revised plan was prepared prior to the carryover allocation date.

The carryover allocation had b building identification number (BIN) assigned to the originally contemplated building. As of the carryover allocation date, Agency did not know of the revised plan. Partnership understood that the plan now included h buildings,

rather than b building, but it did not understand the significance of the lack of a BIN for all h buildings in Project.

Project will be completed and all buildings will be placed in service on or before j, the date prescribed in section 42(h)(1)(E)(i).

In sum, Agency represents that it intended to make a project-based allocation to Project and that the number of buildings and apartments in Project was not material to the carryover allocation for Project.

Agency represents that the fact Project will have h buildings instead of b building does not affect the amount of housing credit dollar amount allocated to Project nor the ranking of Project in Agency's d allocation round, nor any other aspect of the carryover allocation for Project.

But for the administrative omission, Agency would have issued a carryover allocation for h buildings.

#### RULING REQUESTED:

Partnership and Agency request the Service to rule that Agency can issue BINS to the additional k buildings added to Project under the revised plan.

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

#### LAW AND ANALYSIS:

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.

Partnership committed an administrative omission when it failed to inform Agency that the composition of the buildings in Project had changed. We do not believe that this error was a misinterpretation of the applicable rules and regulations under section 42. This omission created a document (i.e., carryover allocation) that inaccurately reflects the

intent of Partnership and Agency at the time the document was originally completed. The intent of Agency was to allocate the same amount of credit to Project, notwithstanding the number of buildings or units in Project. Further, the change does not affect the amount of housing credit dollar amount allocated to Project nor the ranking of Project in Agency's d allocation round, nor any other aspect of the carryover allocation for Project. Thus, a correctable administrative omission occurred in this situation.

Under the represented facts, the d carryover allocation is the credit-allocating 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 b building that received the BIN.

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

1. Partnership committed an administrative omission when it failed to inform Agency that the composition of the buildings in Project under the revised plan had changed;
2. Because of that administrative omission, the carryover allocation inaccurately reflects the intent of Partnership and Agency as of the time the carryover allocation was executed;
3. Agency will correct the administrative error within a reasonable period of time after Agency became aware of the administrative error; and
4. Agency will issue BINs to the additional k buildings added to Project under the revised plan.

To correct this administrative omission, Agency must do the following:

1. Amend the carryover allocation to include a BIN for each of the h buildings in Project. On the amended carryover allocation, Agency should indicate that it is making the correction under section 1.42-13(b), and
2. 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, Agency should follow the specific instructions on the Form 8610 under the heading "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 Project qualifies 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 yours,

BARBARA B. WALKER

Assistant to the Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)