

Private Letter Ruling 9714015, 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 April 18, 1996, and subsequent submissions, requesting rulings under sections 42(b)(2)(A)(ii) and 42(n) of the Internal Revenue Code and under section 1.42-13 of the Income Tax Regulations. By letter dated e, Agency requests (and is hereby permitted) to join this request as an interested party. You request that an election made to fix the applicable percentage for credits allocated in one year to Project be effective for credits allocated in a prior year to Project for which no election was made to fix the applicable percentage. You also request that Agency and Partnership be permitted to correct an administrative error in an allocation of low-income housing credits (credits) to Project. The relevant facts as represented in your submissions are set forth below.

FACTS:

Partnership was formed on a, in City 1. It is taxed pursuant to Subchapter K of the Internal Revenue Code. It uses the accrual method of accounting and has a fiscal year ending aa. Partnership's general partner is General Partner. It is subject to the jurisdiction of District.

Partnership is principally engaged in the business of owning land and constructing Project, a residential multi-family apartment building composed of b units, all of whose residents will be low-income senior citizens. It is intended that all of the units will qualify for low-income housing tax credits under section 42.

On c, Project received a reservation of low-income housing tax credits from the Agency in the amount of \$d. At that time, the anticipated qualified basis of Project was \$f. On q, Project received a Year B carryover allocation of low-income housing tax credits in the amount of \$h (the Year B carryover allocation). Partnership did not make an election to fix the applicable percentage. Project's Building Identification Number is i.

When preparing the document used to make the Year B carryover allocation, Agency inadvertently provided incorrect information regarding the amount of costs that Partnership would have expended, as a percentage of its reasonably anticipated basis, as of j (the "10% requirement"). As a result, the Year B carryover allocation indicated that the 10% requirement had not been met as of j. Partnership had submitted a statement to Agency prior to the issuance of the allocation that Partnership had met the 10% requirement. In that statement Partnership certified that it had an accumulated basis as of g of at least bb%. In cc of Year A, the error to the Year B carryover allocation was

discovered. On k, the Year B carryover allocation was amended to include the correct figures relating to the 10% requirement (the Year A Amendment). On z, Agency sent a letter to the Director of the Internal Revenue Service Center in City 2. The letter explained the error, explained how Agency had corrected the error, and submitted the amendment. In dd of Year C, Partnership was informed by the national office of the Internal Revenue Service (the Service) that, procedurally, the Year A Amendment was made incorrectly. The Service explained that the error made on the Year B carryover allocation (indicating that the 10% requirement had not been met) would, if not corrected, result in a void allocation. Because correcting the void allocation results in a numerical change to the housing credit dollar amount allocated to Project, the Secretary's prior approval (using the procedures outlined in section 1.42-13(b)(3)(iv)) must be obtained to correct the error. The Service permitted Partnership to amend its ruling request to include Agency as an interested party and to request the Secretary to approve the correction of the error to the Year B carryover allocation.

As originally contemplated in the Year B application, Project was to include only l units. In early Year A, the number was increased to b units, and construction and development were estimated to increase correspondingly. Partnership requested an award of additional credits. On m, Project received a reservation of Year A low-income credits in the additional amount of \$n (the Year A reservation). As part of the Year A reservation, which constituted a binding agreement within the meaning of section 1.42-8, Partnership elected to fix the applicable percentage in p, pursuant to a statement of appropriate percentage, which was properly executed and notarized. The applicable percentage for p is q%.

Around the same time that the Year A reservation was issued, the size of the building was changed and Partnership was required by City 3 to include underground parking in Project, an item not previously budgeted for. The total estimated costs for Project had increased to \$r, and the estimated qualified basis of Project had increased to \$s. The amount of the tax credits allocated to Project in Year B and early in Year A was less than that which Project could support and less than the amount necessary to make Project financially feasible. These changes were communicated to Agency, and an additional award of credits was made available.

Partnership received an initial Year A carryover allocation of low-income housing tax credits dated t, allocating tax credits in the amount of \$n, the original amount set forth in the Year A reservation. Agency immediately changed the amount to \$v in a revised Year A carryover allocation of low-income housing tax credits dated w, which superseded the earlier award, and requested the return of all documentation dated t.

Pursuant to documents executed by Partnership on x, and approved by Agency on y, corrections were made to the w carryover allocation to reflect accurately the expenditure made to meet the 10% test.

**RULINGS REQUESTED:**

## RULING 1.

Partnership requests that the Service rule that the applicable percentage of q% for p may or must be applied to both the Year A and the Year B allocations of credit to Project pursuant to section 42(b)(2)(A)(ii).

## RULING 2.

Agency and Partnership hereby request that the Secretary approve under section 42(n) the correction of the error to the Year B carryover allocation.

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

## LAW AND ANALYSIS:

Section 42(a) of the Internal Revenue Code provides a tax credit for investment in low-income housing buildings placed in service after December 31, 1986. For any taxable year in a ten-year credit period, the amount of credit is equal to the applicable percentage of the qualified basis of each qualified low-income building.

In the case of any qualified low-income building placed in service by the taxpayer after 1987, section 42(b)(2)(A) provides that the term "applicable percentage" means the appropriate percentage prescribed by the Secretary for the earlier of the month that the building is placed in service, or, at the election of the taxpayer, the month that the taxpayer and housing credit agency enter into an agreement (that is binding on the agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to the building. An election to use the appropriate percentage for the month of the binding agreement must be made no later than the 5th day after the close of the month the binding agreement is entered into. Such an election, once made, shall be irrevocable. Section 42(b)(2)(B) provides that the percentages prescribed by the Secretary for any month shall be percentages that will yield over a 10-year period amounts of credit that have a present value equal to: (i) 70 percent of the qualified basis of new buildings that are not federally subsidized for the taxable year (70-percent present value credit), and (ii) 30 percent of the qualified basis of existing buildings, and of new buildings that are federally subsidized for the taxable year (30-percent present value credit).

Section 1.42-8 sets forth rules governing binding agreements and the appropriate procedures for entering into an election to fix the applicable percentage. Section 1.42-8(a)(4) provides the rules applicable to buildings that receive multiple allocations of credits. For newly constructed buildings, if an election is made to fix the applicable percentage at the time of entering into a binding agreement, any SUBSEQUENT allocations of credit are subject to that election, even if the original binding agreement is rescinded. Section 1.42-8(a)(4) is silent on the effect of multiple allocations in a newly constructed building when no election to set the applicable percentage is made for the

first allocation(s), but an election is made on a subsequent allocation. The rules of section 1.42-8(a)(4) foster administrative uniformity by requiring the use of the same applicable percentage for multiple allocations, while restricting the ability of a taxpayer to manipulate percentages through the use of rescinded allocations and similar means. Applying an election to set the applicable percentage to allocations made prior to the election is consistent with the objectives of section 1.42-8(a)(4) if no previous election to set the applicable percentage was made for the building.

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.

Agency committed an error by indicating on the Year B carryover allocation that the 10% requirement had not been met as of j. We do not believe that this error was a misinterpretation of the applicable rules and regulations under section 42. This error created an allocation document that did not reflect the intent of Agency and Partnership at the time the allocation document was executed. Partnership had submitted a statement to Agency prior to the issuance of the allocation that Partnership had met the 10% requirement. In that statement Partnership certified that it had an accumulated basis as of g of at least bb. Thus, a correctable administrative error occurred in this situation.

Under the represented facts, the Year B carryover allocation is the credit allocating document. Under section 1.42-13(b)(3)(iii), 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 Project because the error made on the Year B carryover allocation (indicating that the 10% requirement had not been met) would, if not corrected, result in a void allocation. Thus, to correct this administrative error, Agency must obtain the Secretary's prior approval.

#### RULINGS:

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

#### RULING 1.

That the applicable percentage of q for p applies to both the Year A and the Year B allocations of credits to Project.

## RULING 2.

1. Agency committed an administrative error when it failed to correctly state the basis incurred by Partnership by the close of Year B, and the percentage that this basis represents to Partnership's reasonably expected basis in Project determined as of the close of Year B.
2. Because of that administrative error, the Year B carryover allocation inaccurately reflects the intent of Agency and Partnership as of the time they executed the Year B carryover allocation; and
3. Agency attempted to correct the administrative error within a reasonable period of time after Agency became aware of the administrative error. Agency and Partnership timely submitted a request for the Secretary's approval when Agency and Partnership become aware that the initial procedure used to correct the administrative error was incorrect.

Thus, it is appropriate for Agency to amend the Year B carryover allocation. To correct this administrative error, Agency must do the following:

1. Amend the Year B carryover allocation to reflect the basis incurred by Partnership by the close of Year B, and the percentage that this basis represents to Partnership's reasonably expected basis in Project determined as of the close of Year B. On the amended carryover allocation, Agency will indicate that it is making the correction under Regulations section 1.42-13(b)(3)(iii), and
2. Attach a copy of the amended Year B carryover allocation, any documentation supporting Partnership's basis, and a copy of this ruling request, 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)