

Private Letter Ruling 9734014, IRC Section 42

Date: May 19, 1997

Dear ***

This is in response to a letter, dated May 16, 1996, and subsequent correspondence, requesting a private letter ruling on behalf of the Administration and LP under section 42(n) of the Internal Revenue Code and section 1.42-13 of the Income Tax Regulations.

The facts as represented, state that on b, the Administration allocated to LP an annual low-income housing credit dollar amount of \$c from its y credit ceiling for the Project. The Project consists of z buildings in City, containing a total of x garden apartments. Also, on b, the Administration and LP executed a binding agreement (the "Agreement") establishing an applicable credit percentage of f percent for the Project's rehabilitation expenditures and g percent for the acquisition expenditures.

Buildings 1 through 6 were placed in service in h. The remaining buildings were placed in service in j. On m, the Administration executed Forms 8609 for Buildings 1 through 6. When preparing and executing the Forms 8609, the Administration used incorrect placed in service dates for Buildings 2, 4, and 5. The Administration has represented that the mistake was made as a result of using the wrong date from the building's use and occupancy certificates. These certificates provided several dates corresponding to several signature lines, and the incorrect dates mistakenly were used. The Administration and LP have certified that the correct placed in service dates for Buildings 2, 4, and 5 are bb, cc, and dd, respectively.

Also, when preparing and executing the Forms 8609 for Buildings 1 through 6, the Administration failed to review the Agreement, which was on file in its office. As a result, the Administration did not use the applicable credit percentages established in the Agreement, but used the applicable credit percentages for the month each building was placed in service. The Administration intended to use the credit percentages stated in the Agreement. Due to an administrative error or omission, however, the Administration failed to do so.

When the Administration began preparing the forms 8609 for the remaining buildings, it became clear that incorrect credit percentages were used to complete the original Forms 8609. This is because the incorrect percentages used to complete the original forms provided too much credit to be allocated to Buildings 1 through 6 and too little credit for the remaining buildings. LP represents that it claimed on its h tax return, an acquisition credit of \$n and a rehabilitation credit of \$o for Building 2; an acquisition credit of \$p and rehabilitation credit of \$r for Building 4; and an acquisition credit of \$s and a rehabilitation credit of \$t for Building 5. LP deferred low-income tax credits for Buildings 1, 3, and 6 until j.

The Administration and LP request permission under section 42(n)(4) to correct the administrative error by amending the Forms 8609 executed on m, to include the applicable credit percentages of f for rehabilitation expenditures and g for the acquisition expenditures established under the Agreement. After filing the amended Forms 8609, the Administration proposes to file the Forms 8609 for the remaining buildings. The total credit allocated to the Project will remain \$w.

Section 42(a) provides a tax credit for investment in low- income 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.

Section 42(b)(2) provides that for buildings placed in service after 1987, the applicable percentage means the appropriate percentage prescribed by the Secretary for the earlier of 1) the month the building is placed in service, or 2) at the election of the taxpayer, the month when the taxpayer and the credit agency enter into a binding agreement with respect to the housing credit amount allocated to the building. This section also provides that an election by the taxpayer regarding the applicable percentage month is irrevocable.

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 originally is completed. Section 1.42-13(b)(1), however, provides that an administrative error does not include a misinterpretation of the applicable rules and regulations under section 42.

Under section 1.42-13(b)(3)(i), an Agency's correction of an administrative error or omission must amend the document so that the corrected document reflects the original intent of the agency, or the agency and the affected taxpayer, and complies with applicable rules and regulations under section 42. 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.

Under section 1.42-13(b)(3)(iv), an agency must submit a request for the Secretary's approval within a reasonable period of time after discovering the administrative error or omission. Under section 1.42-13(b)(3)(v), to obtain the Secretary's approval under section 1.42-13(b)(3)(iii), an agency, or the agency and the affected taxpayer must agree to the conditions the Secretary considers appropriate.

Therefore, based solely upon the above law and representations above, the Administration is granted approval to correct the administrative error. As required under

section 1.42-13(b)(3)(v), the Administration and LP have agreed to the conditions the Secretary considers appropriate if this request is granted. Accordingly, to correct the administrative error, the Administration must retrieve all of the Forms 8609 for the Project previously sent to LP and complete and issue new Forms 8609 for each of the residential rental buildings in the Project reflecting the correct credit percentages and placed in service dates for each residential rental building in the Project. The Forms 8609 should indicate at the top that they reflect a correction made under section 1.42-13.

Agency should file a Form 8610 with the amended box checked and an attached copy of the amended Forms 8609. In addition, LP must amend its h tax return to reflect the corrected acquisition and rehabilitation credits based upon the f and g applicable percentages.

No opinion is expressed or implied regarding the application of any other provision of the Code or regulations. Specifically, we express no opinion on 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,

Susan Reaman

Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)