

Private Letter Ruling 9737005, IRC Sec(s). 42

UIL No. 0042.14-00

Date: June 11, 1997

LEGEND:

Agency = ***

Partnership = ***

Project = ***

City = ***

b = ***

c = ***

d = ***

f = ***

g = ***

j = ***

k = ***

n = ***

o = ***

p = ***

q = ***

r = ***

s = ***

t = ***

v = ***

w = ***

x = ***

y = ***

z = ***

bb = ***

cc = ***

dd = ***

ee = ***

Dear ***

This responds to your letter dated November 18, 1996, 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.

The facts as represented, by Agency and Partnership are as follows. Partnership was formed to build, develop, own, and operate the Project, a b unit apartment complex in City. As reflected in the application for k low-income housing tax credits for the Project submitted to Agency on n (the "Credit Application"), the Project originally was designed

to include d residential buildings containing a total of b residential units and a common building. Partnership intended to rent 100 percent of the units to low-income tenants. Therefore, the Credit Application specified that the qualified basis of the Project would be \$f. Agency issued a commitment notice, dated o, (the "Commitment Notice"), reserving credit for the Project in the amount of \$j.

Between n and p, the Project architect finalized the Project site plan. The finalized site plan called for the construction of c, rather than d residential buildings. On p, Partnership submitted a carryover allocation form to Agency, showing that the Project would have an accumulated basis of at least \$g as of ee. Neither the carryover allocation form nor any other material submitted to Agency at that time indicated that the number of buildings in the Project had changed. By p, Partnership was aware of the finalized plans. The preparer of Partnership's carryover allocation form, however, was unaware of the finalized plans. The preparer completed the carryover allocation form believing that the Project was to consist of d residential buildings.

Agency issued a carryover allocation of k tax credit authority on g, in the amount of \$j per year (the "Carryover Allocation"). In the Carryover Allocation, d BINs were assigned to the d originally contemplated residential 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 r. On s,

Partnership submitted to Agency a cost certification, including a project cost schedule and c individual building cost certification forms. During late t and early v, Agency was in the process of reviewing cost certifications for issuing Forms 8609 for tax credit projects that were placed in service in t. In late w, after reviewing Partnership's cost certification forms, Agency discovered that the Project consisted of c residential buildings, rather than the originally contemplated d buildings. On x, Agency informed Partnership of the discrepancy between the carryover allocation forms and the cost certification forms, and that a private letter ruling might be needed to correct the error.

Partnership's accountant then began discussions with a representative of Agency about the appropriate procedure to correct the error. On or about y, Agency affirmed that a private letter ruling would be required to correct the error. Partnership then began to assemble the information necessary to request a private letter ruling from the Service, and submitted a draft request to Agency for review on or about z. In early bb, after reviewing the draft request, Agency informed Partnership that its outside counsel needed to be involved in drafting and submitting the ruling request as a matter of Agency policy. On cc, Agency forwarded the draft private letter ruling to its counsel for review. On dd, Agency's counsel returned the draft to Agency for execution and submission.

Agency has made the following additional 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 c 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 k 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 by amending the Carryover Allocation to include a BIN for each of the c buildings in the project and attaching a copy of the amended Carryover Allocation to an amended Form 8610. Agency and Partnership have 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.

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, approval is granted to correct the administrative error. To correct the administrative error, Agency must amend the Carryover Allocation to include a BIN for each of the c residential buildings in the Project. The amended Carryover Allocation should indicate that it reflects a correction made under section 1.42-13. Also, Agency must file a Form 8610 with the amended box checked and an attached copy of the amended Carryover Allocation.

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.

Sincerely yours,

Susan Reaman
Chief, Branch 5
Office of the Assistant
Chief Counsel
(Passthroughs and Special Industries)