

Private Letter Ruling 9738011, IRC Section 42

UIL No. 0042.14-00

Date: June 18, 1997

Refer Reply to: CC:DOM:P&SI:5-PLR-244138-96

LEGEND:

Agency = ***
Partnership = ***
Project = ***
Developer = ***
State C = ***
City D = ***
City E = ***
City F = ***

a = ***
b = ***
c = ***
d = ***
e = ***
f = ***
g = ***
h = ***
i = ***
j = ***
k = ***
l = ***
m = ***
n = ***
o = ***
p = ***
q = ***
r = ***
s = ***
t = ***
u = ***
v = ***
w = ***
x = ***
y = ***

Dear ***

This letter is in response to your letter of July 19, 1996, submitted on behalf of the Agency and the Partnership, requesting a private letter ruling under section 42(n) of the Internal Revenue Code and section 1.42-13 of the Income Tax Regulations to correct certain errors on Forms 8609 and 8610. The Agency and the Partnership have made the following representations.

FACTS

The Agency's annual accounting period is the State C's fiscal year, x. Its overall method of accounting for maintaining its accounting books and filing its federal income tax returns is the cash basis method of accounting. The Partnership's annual accounting period is the calendar year. Its overall method of accounting is the accrual method.

The location of the District Office of the Internal Revenue Service (the "Service") that has or will have examination jurisdiction over all returns filed by Agency is City D. The location of the District Office of the Service that has or will have jurisdiction over all returns filed by Partnership is city E.

The Agency develops and administers financing programs for affordable housing through public/private partnerships with lenders, developers, nonprofit organizations, and government. It is the designated housing credit agency in State C that administers the section 42 low-income housing tax credit ("credit") program. The Partnership is a State C limited partnership formed for the purpose of developing and owning the Project, located in City F.

The Project consists of a buildings as well as a community building containing a b, c, and d, with a total of e units of new construction. One hundred percent (100%) of the total units are set aside for tenants whose incomes do not exceed sixty percent (60%) of the area median gross income.

An application for credits for the Project was filed with the Agency by the predecessor to the Developer in f. The ownership of the Project was transferred by the Developer to the Partnership on g. Carryover allocations (project-based allocations) were issued by the Agency to the Partnership for h on i and for j on k.

In l, the Agency issued from its credit ceiling for calendar year f a carryover allocation to

Partnership for h in credits, assigning to the buildings in the Project the consecutive building identification numbers ("BINs") n. In o, the Agency issued from its credit ceiling for calendar year m an additional carryover allocation to the Partnership for the Project for j in annual credits. In making the m allocation, the Agency erroneously assigned a new single BIN to the Project. In both cases, the Agency designated the allocations as "project-based," conveying an intention not to allocate at that time the eligible basis, qualified basis, and annual credit amount to the individual buildings in the Project.

The buildings were placed in service in late m. In p, Agency issued final, binding allocations to the Partnership. Erroneously such final, binding allocations were made on only q Forms 8609 (Low-Income Housing Credit Allocation Certification). Agency issued the y Form 8609 for the entire annual credit amount of the l carryover allocation and erroneously assigned such allocation to only one BIN, r, the y of the series of a BINs assigned to the Project in f, rather than issuing separate Forms 8609 for each of the a BINs assigned to the Project and apportioning the credit allocation among such BINs.

The s Form 8609 was issued for t, a portion of the additional carryover allocation to the

Partnership issued by Agency in o. The BIN designated on the s Form 8609 was u. This BIN was a new number erroneously assigned to the Project at the time of the m carryover allocation. The Agency should have issued separate Forms 8609 for the m carryover allocation for each of the a BINs assigned to the Project in f.

The intent of the Agency in completing the Forms 8609 for the f and m carryover allocations was to satisfy the rules applicable to the issuance of the Forms 8609 for the Project. The intent of the Partnership with respect to such Forms 8609 was for the Forms 8609 to be issued for each BIN assigned to the Project in f for both the f and m carryover allocations and that such Forms 8609 apportion the allocations among the various BINS.

The errors were discovered by Agency on v. Agency and Partnership wish to refile corrected Forms 8609 relating to the Project and the Agency's corrected Form 8610 for calendar year w pursuant to section 1.42-13(b)(3).

The Agency has represented that their compliance monitoring of the Project indicates that the Project met the minimum set-aside for m, the first year of the credit period.

DISCUSSION

Under section 42(n)(4), the Secretary shall prescribe regulations providing the opportunity for state and local housing credit agencies to correct administrative errors and omissions concerning allocations and record keeping, 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 or omission does not include any misinterpretation of the applicable rules and regulations under section 42.

Under section 1.42-13(b)(3)(iii)(A), an Agency must obtain the Secretary's prior approval to correct 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 Agency's i carryover allocation did not apportion the allocation among the Project's a BINs. The Agency in making the k allocation, assigned the entire carryover allocation to a single erroneously assigned BIN for the entire Project. This allocation should have been assigned to the a BINs assigned to the Project in f. When the Forms 8609 for the f and m allocations were completed, the Agency erroneously failed to complete Forms 8609 for each of the Project's a BINs and to apportion each credit allocation among such a BINs. These errors were not the result of misinterpretations of section 42 or the regulations promulgated thereunder.

Further, these errors resulted in documents (the Forms 8609 and 8610 as submitted by the Agency) that did not accurately reflect the intent of either the Agency or the Partnership at the time the forms were originally completed. The intent of the Agency and the Partnership was for each of the carryover allocations to be allocated among all buildings contained in the Project and that properly completed Forms 8609 be filed reflecting such allocations. The effect of correcting these administrative errors would be to file corrected Forms 8609 allocating both the f and m carryover allocations among the a BINs for the Project and to file a corrected Form 8610.

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

1. The Agency committed an administrative error when it allocated the k carryover allocation to a BIN that had been erroneously assigned to the Project;
2. Further, administrative errors were committed when the Forms 8609 issued with respect to the i and k carryover allocations apportioned the entire allocation to single BINs rather than among the a BINs assigned to the Project in f;
3. As a result of these administrative errors, the Forms 8609 for the Project and the Form 8610 filed by the Agency for calendar year w were incorrect and inaccurately reflected the intent of the Agency and the Partnership as of the time such forms were executed.
4. To correct the administrative errors, the Agency must do the following:
 - a. Obtain from the Partnership and void the incorrectly issued Forms 8609.
 - b. File Forms 8823 indicating the obsolete BIN and Forms 8609.
 - c. Issue corrected Forms 8609 for the Project. a of the corrected Forms 8609 will relate to the i allocation and a will relate to the k allocation.

d. Attach copies of the reissued amended Forms 8609 to an amended Form 8610,

Annual Low-Income Housing Credit Agencies Report, for calendar year w and file such Form 8610 with the Service. When completing the amended Form 8610, Agency will follow the specific instructions on 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 the Project qualifies for the low-income housing tax credit under section 42 nor the validity of costs included in eligible basis.

Under the power of attorney on file, we are sending a copy of this ruling to the Agency's authorized representative.

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