

Private Letter Ruling 9740017, IRC Section 42

UIL No. 0042.09-00

Date: July 2, 1997

Refer Reply to: CC:DOM:P&SI:5 PLR-242221-96

LEGEND:

Agency = ***

Partnership = ***

Partnership II = ***

State = ***

City 1 = ***

City 2 = ***

City 3 = ***

Project = ***

Realty Co. = ***

Associates = ***

Representative = ***

Management Co. = ***

Accountants = ***

a = ***

b = ***

c = ***

d = ***

e = ***

f = ***

g = ***

h = ***

i = ***

j = ***

k = ***

l = ***

m = ***

n = ***

o = ***

p = ***

q = ***

r = ***

s = ***

u = ***

v = ***

w = ***

x = ***

y = ***

z = ***

Dear ***

This letter responds to your letter dated June 26, 1996, and subsequent submissions, on behalf of Partnership and Agency requesting rulings under section 42(l)(1) and 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. Partnership's business consists of low-income housing/rental real estate operations. Agency is a governmental unit of State, and is duly authorized to administer State's low-income housing program. The Internal Revenue Service District Office that will have examination jurisdiction over the return of Partnership is located in City 1. The Internal Revenue Service District Office that will have examination jurisdiction over the forms filed by Agency is located in City 2.

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

FACTS:

The Partnership was formed on a for the purpose of owning, operating and acquiring the Project, a x building, b unit apartment complex from Partnership II and converting the Project to low-income housing units. The Project had and continues to receive HUD section 8 assistance. The Project is located in City 3.

The acquisition of the Project was begun by Realty Co. in c. The Partnership entered into an acquisition agreement with Realty Co. on a. On d, the Partnership acquired the Project for \$e. The Partnership allocated the purchase price to the following assets: \$f to land, \$g to building, and \$h to furniture and equipment.

At this same time Realty Co. engaged Associates to prepare an application for low-income housing tax credits for submission to the Agency. The application was prepared by Representative, the general partner of Associates. In the application, which was approved by the Agency on i, the Representative indicated that there were j buildings that consisted of b low-income housing units. Representative had estimated that the total eligible basis for the acquisition credit to be around \$k.

In early l, the Agency delivered to the Partnership j Forms 8609 (one for each building) that were to be attached to the Partnership's m Form 1065. Each form listed a maximum qualified basis of \$n with a maximum applicable credit percentage allocation of o% resulting in \$p of housing credit dollars allocated to each building.

The buildings were placed in service on q, and the actual total eligible basis was \$r. The accountants of the partnership then computed the original qualified basis of each building at the close of the first [year of the] credit period to be \$u. The Partnership filed its Forms 1065 for the years v using \$u as the qualified basis for each building.

In w, the Agency made a site visit to the Project as a part of its normal inspection process and noted that the Project contained x buildings with a total of b units and not j buildings with a total of b units as reflected in the application for low income housing credits. The Agency, by letter dated y, informed the Management Co. of this discrepancy. The Partnership, general partners [of Partnership], Management Co., Accountants, Agency, and Representative were unaware of this administrative error. The Representative believes that the application was completed incorrectly and should have reflected x buildings instead of j.

Partnership and Agency further represent that no market- rate tenant has occupied a unit in the Project since the Project's inception. The Project has always received HUD section 8 project- based assistance based upon x buildings and b units. No building in the Project has ever had a decrease in qualified basis. The Partnership has complied with all Agency standards and site inspections. There has been no change in ownership of the Project that would cause a technical termination of the Partnership under section 708.

The correction of the administrative error would result in an allocation of \$z of credit to s building and would reduce the allocation to the other j buildings by a total of \$z.

The correction of the administrative error will not have any effect on State's housing credit ceiling under section 42(h)(3)(C) or on the State's unused housing credit carryover that is assigned to the Secretary under section 42(h)(3)(D).

In addition, Agency represents that its intent was to allocate the same amount of credit to the Project, notwithstanding the number of buildings or units in the Project. Further, the change does not affect the amount of housing credit dollar amount allocated to the Project nor the ranking of the Project in Agency's allocation round, nor any other aspect of the allocation for Project.

RULING REQUESTED:

Partnership and Agency request the Service to rule pursuant to section 42(n) that Agency may:

1. Issue a new Form 8609 to the s building that received no allocation of credit in m to reflect the pro-rata share of credit that the s building would have had if Partnership's application for credit in m had been for x buildings; and
2. Amend the Forms 8609 for the j buildings to reflect the pro- rata share of credit that each building would have had if Partnership's application for credit in m had been for x buildings. On the amended allocation included on Forms 8609, Agency will indicate that it is making the correction under regulations section 1.42-13(b)

Partnership also requests the Service to rule that:

3. The administrative error was due to reasonable cause and not willful neglect and that failure to certify the first year information required under section 42(l)(1) for the s building that initially lacked a Form 8609 will not prevent the Partnership from receiving credit for the s building.

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), 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.

Under section 42(l)(1), a taxpayer is required to certify certain first year information for a qualified low-income building. This information includes (1) the taxable year and the calendar year that the building was placed in service, (2) the adjusted basis and eligible basis of the building at the close of the first year of the credit period, (3) the maximum applicable percentage and qualified basis permitted to be taken into account by the appropriate housing credit agency under section 42(h), (4) the minimum set-aside election under section 42(g)(1), and (5) other information that the Secretary may require. This certification requirement is satisfied when a taxpayer completes Part II of a validly issued Form 8609, Low-Income Housing Allocation Certification, and timely files this form with its annual federal income tax return. In the case of a failure to certify this first year information through the completion and timely filing of Form 8609, unless it is shown that the failure is due to reasonable cause and not to willful neglect, no credit is allowed for a building for any taxable year ending before the certification is made.

Partnership committed an administrative error when it failed to inform the Agency that the correct number of buildings in the Project was x rather than j. This resulted in overstating the qualified basis in j buildings and understating the basis in the s building omitted. We do not believe that this error was a misinterpretation of the applicable rules and regulations under section 42. This error created allocation documents that did not reflect the intent of the Partnership and Agency at the time they executed the allocation documents. The Agency intended to allocate low income housing credits to each building, based on each building's pro-rata share of the total purchase price of the 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 allocation round, nor any other aspect of the allocation for Project. Thus, a correctable administrative error occurred in this situation.

Under the represented facts, the Forms 8609 are the credit allocating documents as well as the administrative documents. 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 buildings in the Project because the additional s building was not computation to pro-rate the credit equally between all the included in the original buildings in the Project. Thus, to correct this administrative error, Partnership and Agency must obtain the Secretary's prior approval.

In addition, correction of this administrative error would result in the issuance of a new Form 8609 for a building after the close of the first year of the building's credit period. Since no Form 8609 previously existed for the s building, the Partnership may not have satisfied the first year certifications required by section 42(l)(1). Unless the Service is satisfied that the administrative error was due to reasonable cause and not willful neglect, no credit will be allowed to the Partnership for any taxable year ending before the required certifications are made.

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 error when it failed to inform Agency that the correct number of buildings in the Project was x instead of j. This resulted in overstating the qualified basis in j buildings and understating the basis in s building;
2. Because of that administrative error, the Forms 8609 inaccurately reflect the intent of Partnership and Agency at the time the allocations were made;
3. The failure to certify the omitted s building was due to an administrative error. Thus, failure to certify the first year information required under section 42(l)(1) for the s building that initially lacked a Form 8609 was due to reasonable cause and not wilful neglect and will not bar the Partnership from receiving credit attributable to the s building for any prior years the Form 8609 was omitted, and
4. Agency requested approval within a reasonable period of time after discovering the administrative error.

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

1. Issue a new Form 8609 to the s building that received no allocation of credit in m to reflect the pro-rata share of credit the s building would have had if Partnership's application for credit in m had been for x buildings;
2. Amend the Forms 8609 for the j buildings to reflect the pro- rata share of credit that each building would have had if Partnership's application for credit in m had been for x buildings instead of j buildings. On the amended allocation included on Forms 8609, Agency will indicate that it is making the correction under regulations section 1.42-13(b); and
3. Attach a copy of the new and amended Forms 8609 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 the [sic] whether the amount of eligible basis for any building in the Project is correct, or whether Project otherwise 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,

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