

Private Letter Ruling 9742021, IRC Section 42

UIL No. 0042.04-05

Date: July 18, 1997

Refer Reply to: CC:DOM:P&SI:5 PLR-105512-97

The Service has ruled that an agency may correct an administrative error in a carryover allocation pertaining to a low- income housing credit.

LEGEND:

Agency = ***

Partnership = ***

General Partner = ***

Limited Partner = ***

State = ***

Project = ***

District A = ***

District B = ***

City = ***

Sellers = ***

District = ***

Year A = ***

a = ***

b = ***

c = ***

d = ***

e = ***

f = ***

g = ***

h = ***

i = ***

j = ***

k = ***

l = ***

m = ***

n = ***

o = ***

p = ***

q = ***

r = ***

s = ***

t = ***

u = ***

v = ***

w = ***

x = ***

Dear ***

This letter responds to your letter of March 18, 1997, on behalf of Agency and partnership, as their authorized representative, requesting a ruling under section 42(n) of the Internal Revenue Code and section 1.42-13 of the Income Tax Regulations to allow Agency and Partnership to correct an administrative error in an allocation of low-income housing credits (credits) to Project. The relevant facts as represented in your submission are set forth below.

FACTS:

The Agency and the Partnership have made the following representations.

As to each of the Partnership, the General Partner, and the Limited Partner: its annual accounting period is the calendar year, its overall method of accounting for maintaining its accounting books and filing its federal income tax returns is the accrual method.

The District Office of the Internal Revenue Service that will have examination jurisdiction over all returns filed by the Partnership and the General Partner is District A. The District Office of the Internal Revenue Service that will have examination jurisdiction over all returns filed by the Limited Partner is District B.

Agency is a public body corporate and politic of State. Partnership is a State limited partnership formed for the purpose of building, developing, owning and operating Project, a a-unit apartment complex located in City. All of the units in the Project are intended for occupancy as low-income units within the meaning of section 42(i)(3).

Partnership acquired undeveloped land from Sellers in Year A, and began the process of applying for tax credits in b.

An application for Year A credits for the Project was submitted by the Partnership to the Agency on c. Section d of the credit application specified that the Project would consist of e buildings.

The credit application further specified that the eligible basis of the Project would be f. Because one hundred percent (100%) of the units were intended for rental to qualified low-income tenants, the credit application specified that the qualified basis of the Project also would be f. The Project received a reservation of credits on g.

The Partnership submitted to the Agency a carryover provision request on h. In that document, the number of buildings in the Project is indicated as i. In fact, the Partnership submitted i separate requests, one for each building. The change in the number of buildings from e buildings to i buildings stemmed from the fact that when the application was filed it was anticipated that only e buildings would be built but a review of the architectural plans revealed that the Project would work better with i buildings. The Partnership submitted a low-income housing credit certification of basis expenditure on j showing that it would have an accumulated basis in the Project as of k, equal to at least l representing approximately m of the reasonably anticipated total basis in the project of n. The carryover allocation itself states that the amount of costs to be incurred by k would be o of the reasonably anticipated basis. This was an error made by the Agency. Although the Agency had been informed by the general partner that, as of p it was anticipated that at least q of

costs would be incurred by k, the Agency mistakenly typed in o. In fact, the Partnership incurred m by o.

The Agency issued a carryover allocation of Year A tax credit authority on r, in the amount of s per year. The project received 4% new construction credits. In the carryover allocation, e building identification numbers (BINs) were assigned to the i contemplated buildings. This was because the Agency failed to notice the change in the number of buildings set forth in the i carryover provision request documents submitted by the Partnership prior to the date on which the carryover allocation was issued.

At the time that it received the carryover allocation, although the Partnership understood that the Project now included i buildings, rather than e buildings, it did not appreciate the significance of lack of a separate BIN for all i buildings in the Project. Accordingly, the Partnership did not realize that the fact that only e BINs had been assigned to the Project in the carryover allocation would create any sort of problem.

The Project was completed and all buildings were placed in service in t, with e buildings placed in service on u and building i on v, within the date prescribed in section 42(h)(1)(E)(i). On w the Partnership submitted certificates of use and/or occupancy and cost certifications and requested that the Agency issue i Forms 8609 for the i buildings in the Project. Following conversations between the Agency and the Partnership as to exactly what had transpired, the parties realized that an administrative error or omission had occurred.

In connection with the above statement of facts, the Agency represents that (1) the number of buildings was not material to the carryover allocation for the Project and (2) the fact that the Project had i buildings rather than e buildings would not have affected (a) the amount of credit allocated to the project, (b) the ranking of the Project in the Agency's Year A allocation round or (c) any other aspect of the carryover allocation for the Project.

RULING REQUESTED:

The Agency and the Partnership hereby request permission pursuant to section 42(n) to correct the administrative error described herein by:

1. Amending the carryover allocation to include a BIN for each of the i buildings in the Project. The BINs for these buildings will be sequential;
2. Amending the carryover allocation to correctly state that q of the reasonably anticipated basis would be incurred by k. On the amended carryover allocation, the Agency will indicate that it is making the above corrections under regulations section 1.42-13(b); and
3. Attaching a copy of the amended Carryover Allocation to the Agency's Form 8610 for Year A.

As required under regulation section 1.42-13(b)(3)(v), the Agency and the Partnership 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) 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.

The Agency committed two errors on the Year A carryover allocation by indicating that (1) the Project consisted of e buildings when the Project configuration had changed to include i buildings, and (2) the 10% requirement had not been met as of k. 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 the Agency and the Partnership at the time the allocation document was executed. On h, the Partnership had submitted a carryover provision request to the Agency prior to the issuance of the carryover allocation indicating that the configuration of the Project had changed from e to i buildings. On j, the Partnership had submitted a low-income housing credit certificate of basis expenditure (also prior to the issuance of the carryover allocation) indicating that it would have an accumulated basis in the Project exceeding the 10% requirement. Partnership's accumulated basis in the Project did, in fact, meet the 10% requirement by k. Thus, a correctable administrative error occurred in this situation.

Under the represented facts, the Year A carryover allocation is the credit allocating document. 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 for a building or project. This correction would involve a numerical change to the credit amount allocated to a building in the Project because (1) the error stating the Project had i buildings instead of e buildings would, if not corrected, result in the unavailability of credit to x building in the Project, and (2) the error indicating that the 10% requirement had not been met would, if not corrected, results in a void allocation for the entire Project. Thus, to correct this administrative error, the Agency must obtain the Secretary's prior approval.

RULINGS:

Based solely upon the relevant law and regulations as applied to the facts submitted and the representations set forth above, we rule as follows:

1. The Agency committed an administrative error when it failed to notice that the information provided by the Partnership in the carryover provision request

concerning the number of buildings in the Project had changed from e buildings to i buildings;

2. The Agency committed an administrative error when it failed to correctly state the basis incurred by the Partnership by the close of Year A, and the percentage that this basis represents to the Partnership's reasonably expected basis in Project determined as of the close of Year A;

3. Because of the administrative errors, the Year A carryover allocation inaccurately reflects the intent of the Agency and the Partnership at the time the Year A carryover allocation was executed; and

4. The Agency and Partnership attempted to correct the administrative errors within a

reasonable period of time after they became aware of the administrative errors.

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

1. Amend the Year A carryover allocation to include a BIN for each of the i buildings in the Project. The i BINS must include the e BINS already existing for the project. All i BINS for the buildings should be sequentially numbered;

2. Amend the Year A carryover allocation to reflect that q of the reasonably expected basis would be incurred by the Partnership by the close of Year A. On the amended carryover allocation, the Agency will indicate that it is making the above corrections under Regulation section 1.42- 13(b)(3)(iii); and

3. Attach a copy of the amended year A 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, the 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 the 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,

SUSAN REAMAN

Chief, Branch 5

Office of the Assistant

Chief Counsel

(Passthroughs and Special Industries)