

Private Letter Ruling 9802017, IRC Section 42

UIL No. 0042.14-00

Headnote:

Reference(s): Code Sec. 42;

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

Full Text:

Date: October 8, 1997

Refer Reply to: CC:DOM:P&SI:5-PLR-111188-97

LEGEND:

Agency = ***

Partnership = ***

Company = ***

Project = ***

State A = ***

City C = ***

Counsel D = ***

a = ***

b = ***

c = ***

d = ***

e = ***

f = ***

g = ***

h = ***

i = ***

j = ***

k = ***

l = ***

m = ***

n = ***

o = ***

p = ***

Dear ***

This letter is in response to your letter of May 27, 1997, and subsequent correspondence, 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 an administrative error or omission. The Agency and the Partnership have made the following representations.

The Partnership is a State A limited partnership with Company as the general partner. The Partnership's and Company's annual accounting period is the calendar year and their overall method of accounting is the accrual method. The location of the district office of the Internal Revenue Service that will have examination jurisdiction over all returns filed by the Partnership is City C. The Partnership was formed to build, develop, own, and operate a residential housing complex (the "Project") in City C. The Project consists of a units of which b will be section 42 restricted- income units.

In c, the Partnership submitted an application for an allocation of section 42 tax credits to the Agency. The initial site plan for the Project called for d buildings with a total units. Consistent with this plan, the Agency awarded the Project d building identification numbers ("BINs").

In the development stage of the Project and prior to the submission of the carryover allocation form, the original plan was modified. The design of e of the d proposed buildings actually called for f separate foundations although the structure was to be connected with a common roof line. When this building was submitted to the city for a building permit, the city required the structure to be treated as f separate buildings. Moreover, the architects suggested that certain economic efficiencies would be gained and the overall aesthetics of the Project would be improved by "splitting" that building into f separate buildings. Accordingly, the Project actually constructed consists of g buildings rather than d. Although the number of buildings was increased, the Project contains the same number of total units (a), the same number of low income units (h), the same mix of one, two, and three bedroom units as called for under the original plan, and each unit consists of the same square footage as provided in the original plan. The Project was expected to be completed by i.

Not knowing the importance of having an additional BIN for its revised g-building configuration, the Partnership submitted a low-income housing credit certification of basis expenditure for the d BINs (Carryover Certification). Nothing in the material submitted to the Agency at that time indicated that the number of buildings in the Project had changed. The Agency then issued a carryover allocation in the amount of j per year based on the original d- building plan as the Agency was not informed of the change

in the number of buildings prior to the date on which the carryover allocation was issued. Subsequently, when the Partnership requested that the Agency issue g Forms 8609 (Low-Income Housing Credit Allocation Certification) for the g buildings in the Project, the Agency realized that its carryover allocation had included only d BINs and so notified the Partnership. On p, Company notified the Agency that the error had occurred.

On or about k, the Agency informed the Partnership that a private letter ruling would be required to correct the error. The Partnership then began to assemble the information necessary to request a private letter ruling, and submitted a draft request to the Agency for review on or about l. In late m, after reviewing the draft request, the Agency informed the Partnership that its Counsel D needed to be involved in drafting and submitting the ruling request as a matter of Agency policy. On n, the Agency forwarded the draft private letter ruling to Counsel D for review. On o, Counsel D returned the draft to the counsel for the Partnership for revision and submission.

In connection with the above statement of facts, the Agency represents that: (1) it intended to make a project-based allocation to the Project pursuant to section 42(h)(1)(F); (2) the number of buildings in the Project was not material to the carryover allocation for the Project; and (3) the fact that the Project had g residential buildings rather than d would not [have] affected (a) the amount of credit allocated to the Project, (b) the ranking of the Project in the Agency's c allocation round, or (c) any other aspect of the carryover allocation for the Project.

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), a state 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.

In the present case, the omission did not result from a misinterpretation of the applicable rules and regulations under section 42. This omission did, however, result in an allocation document that did not reflect the intent of the Agency and the Partnership at the time the carryover allocation was executed.

Based solely upon the representations and relevant law and regulations as set forth above, we conclude as follows:

1. Partnership committed an administrative error when it failed to inform the Agency that the correct number of residential buildings in the Project was g instead of d.

2. To correct this administrative error, the Agency must amend the carryover allocation to

include a BIN for each of the g buildings in the Project. The BINs for these buildings must be sequential. On the amended carryover allocation, the Agency must indicate that it is making the correction under section 1.42-13(b). Additionally, the Agency must attach a copy of the amended carryover allocation to an Form 8610 (Annual Low-Income Housing Credit Agencies Report) for c, and file the Form 8610 with the Service.

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 the Project's costs included in eligible basis.

Under the power of attorney on file, we are sending a copy of this ruling to your 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,

Kathleen Reed
Assistant to the Branch Chief, Branch 5
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)