

Private Letter Ruling 9805008, IRC Section 42

UIL No. 42.09-00

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 24, 1997

In Reference to: CC:DOM:P&SI:5-PLR-115305-97

LEGEND:

Partnership = ***

Agency = ***

Project = ***

General Partner = ***

Limited Partner = ***

City = ***

State = ***

a = ***

b = ***

c = ***

d = ***

e = ***

f = ***

g = ***

h = ***

i = ***

j = ***

k = ***

l = ***

m = ***

n = ***

o = ***

p = ***

q = ***

r = ***

Dear ***

This letter responds to your authorized representative's letter dated August 7, 1997, and subsequent correspondence submitted on behalf of the Partnership and the Agency, requesting permission under section 42(n)(4) of the Internal Revenue Code and section 1.42-13(b) of the Income Tax Regulations to correct an administrative error in an allocation of the low-income housing credit dollar amounts.

Partnership and Agency have made the following representations:

The Partnership is a limited partnership formed under the laws of State for the purposes of developing, owning, and operating the Project, which is a low-income housing tax credit project located in City. The partners of the Partnership are General Partner and Limited Partner.

The Project is located on a a acre parcel of land in City. As initially planned, the Project would consist of b buildings, containing c residential units. On this basis, the Partnership first applied to the Agency for an allocation of k tax credits for the Project in l. The application stated that the Project would consist of c units in the b buildings, which would be comprised of d one- bedroom units, e two-bedroom units, f three-bedroom units, and g four-bedroom units. The Partnership requested that the Project be allocated \$h of annual low-income housing tax credits.

The Partnership subsequently received from the Agency a notice of intent to offer tax credits to the Project. On m, the Agency issued a carryover allocation of k Tax Credit Authority for the Project. The allocation document acknowledged the allocation of an annual federal credit amount of \$i and also assigned b building identification numbers (BINs) to each of the Project's buildings in accord with the Partnership's initial request. This carryover allocation was duly signed and notarized by the Partnership and returned to the Agency in a timely manner.

At that time, it was still the understanding of the Partnership that the Project would consist of b buildings. This understanding was based upon design information that the Partnership had received from the Project's architect to the effect that the design was consistent with local design requirements. Unknown to the Partnership, however, was the fact that these design requirements might require that r of the Project's b buildings be split in half, resulting in j total buildings.

The Partnership began to seek local design approval in the summer of k. However, by the end of k, some design issues remained unresolved. Discussions continued into n and were finally resolved in o when formal approval was obtained from the planning commission. As a result of this process, the Project's design was changed from b buildings, as originally represented to the Agency, to j buildings pursuant to local requirements. Otherwise, the number of total units, unit configuration, aggregate square footage, development costs, and basis estimates remained constant from the time of the application to the present.

Final resolution of the local design plan occurred in n, which was subsequent to the k carryover allocation issuing b BINs had been signed and returned to the Agency. At the time the design plan was resolved and for some time thereafter, the Partnership was unaware of the significance of the discrepancy between the number of buildings that had been approved by the local planning process (j) and the number of BINs that had been assigned to the Project as a consequence of the k carryover allocation (b) and did not notify the Agency of the change. The Partnership finally discovered that it had an insufficient number of BINs in p when the Partnership routinely updated the Agency about the status of the Project. Subsequently, the Partnership and the Agency attempted to resolve the problem, but determined in g that the Secretary's approval would be required pursuant to section 1.42-13(b), in order that the number of Forms 8609, Low-Income Housing Credit Allocation Certification, to be issued would correspond to the actual number of buildings. As soon as possible thereafter, the Partnership engaged the services of qualified tax counsel and prepared this request for a ruling. The request has been reviewed and approved for submission by both the Agency and the Agency's counsel.

In connection with the above statement of facts, the Agency has agreed and represented that it intended to make a project based allocation to the Project pursuant to section 42(h)(1)(F) and that the number of buildings was not material either to its initial reservation of credits or its subsequent carryover allocation of the credit reserved. The Agency has also agreed and represented that the fact that the Project will have j buildings rather than b does not affect the amount of the housing credit dollar amount allocated to the Project, the ranking of the Project in the Agency's allocation round, or any other aspect of the carryover allocation for the Project.

The Agency and the Partnership hereby request permission under section 42(n) to correct the administrative error described herein by amending the carryover allocation to include a BIN for each of the j buildings in the Project and attaching a copy of the amended carryover allocation to an amended Form 8610, Annual Low-Income Housing Credit Agencies Report, for k.

As required by section 1.42-13(b)(3)(v), the Agency and the Partnership hereby agree to such conditions as the Secretary considers appropriate if the 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 or omission does not include a

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 Partnership failed to inform the Agency before the k carryover allocation was issued that the number of buildings in the Project had changed from b to j. This error did not result from a misinterpretation of the applicable rules and regulations under section 42. However, the error did result in an allocation document that did not accurately reflect the intent of the Agency and the Partnership at the time the k carryover allocation was executed. Thus, a correctable administrative error occurred in this situation.

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

- 1) The Partnership committed an administrative error when it failed to inform the Agency that the correct number of buildings in the Project was j instead of b;
- 2) Because of this administrative error, the k carryover allocation inaccurately reflects the intent of the Agency and the Partnership when the k carryover allocation was executed;
- 3) The Agency and the Partnership attempted to correct the administrative error within a reasonable period of time after they became aware of the error; and
- 4) To correct the administrative error, the Agency must amend the k carryover allocation to include a BIN for each of the j buildings in the Project. The BINs for these buildings must be sequential. On this amended carryover allocation, the Agency must indicate that it is making the correction under section 1.42-13(b). In addition, the Agency must attach a copy of the amended k carryover allocation to an amended Form 8610 for k, and file this Form 8610 with the Internal Revenue 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.

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.

Pursuant to the power of attorney on file with this office, we are forwarding a copy of this letter to your authorized representative.

Sincerely yours,

Kathleen Reed

Assistant to the Branch Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)