

Private Letter Ruling 9817028, IRC Section 42

UIL No. 0042.09-00

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: January 23, 1998

In Reference to: CC:DOM:P&SI:5 – PLR-119641-97

In re: Request for Private better Ruling under section 42(n)(4) of the Internal Revenue Code

LEGEND:

Partnership = ***

Agency = ***

Project = ***

City X = ***

State Y = ***

District = ***

Old Address = ***

New Address A = ***

New Address B = ***

a = ***

b = ***

c = ***

d = ***

e = ***

f = ***

g = ***

h = ***

Dear ***

This letter responds to a letter dated August 6, 1997, that was submitted on behalf of the Agency and the Partnership, 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.

The Agency and the Partnership have made the following representations:

The Partnership is a calendar year taxpayer that uses the accrual method of accounting. The Agency uses a fiscal year beginning c. The District Office of the Internal Revenue Service that has or will have examination jurisdiction over the Agency and the Partnership is District.

The Partnership is the developer of family and handicapped rental housing in City X. The Agency is the State Y credit agency for the Low-Income Housing Tax Credit Program.

The Partnership was issued one Form 8609, Low-Income Housing Credit Allocation Certification, for the Project. The initial application for a "Tax Credit Reservation" indicated that the Project consisted of one building. At the time the Agency issued a carryover allocation, the application for the carryover allocation indicated that the Project consisted of two buildings, but, according to the Agency, the Agency staff was not aware that the Project consisted of two buildings. Thus, the Agency issued one building

identification number (BIN) for the Project. The original BIN number was d and the address on the BIN was Old Address. When the Project was placed in service, there were two buildings. The Agency represents that it failed to notice the correct number of buildings in the Project. If the Agency had been aware, the Agency represents that it would have issued two Form 8609s and BINs. The unit count and the total tax credits allocated to the Project remained the same from the reservation until the Project was placed in service. The qualified basis of f will be equally divided between the two new Form 8609s. The a carryover allocation of g credits also will be equally divided between the two buildings. The applicable credit percentage of h remains the same for both buildings.

The Agency and the Partnership are requesting permission under section 42(n) to correct the Agency's administrative error by amending the a carryover allocation to include a BIN for the second building 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 b. The corrected BINs and addresses for the Project are BIN d, New Address A, and BIN e, New Address B.

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 Agency failed to notice the correct number of buildings in the Project before the a carryover allocation was issued. 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 a 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 Agency committed an administrative error when it failed to notice that the information provided by the Partnership in the carryover request had changed from one building to two buildings;
2. Because of this administrative error, the a carryover allocation inaccurately reflects the intent of the Agency and the Partnership when the a carryover allocation was executed; and
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.

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

1. Amend the a carryover allocation to include a BIN for each of the buildings in the Project and allocate the credits between the two buildings. On the amended a carryover allocation, the Agency will indicate that it is making the correction under section 1.42-13(b)(3)(iii)(A). The BINs must include BIN d already existing for the Project. As agreed to by the Agency, the new BIN e will be sequentially numbered; and
2. Attach a copy of the amended carryover allocation to an amended Form 8610 for b, and file both the amended carryover allocation and the amended Form 8610 with the Service. 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 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.

Sincerely yours,

KATHLEEN REED

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Office of Assistant Chief Counsel

(Passthroughs and Special Industries)