

Private Letter Ruling 9818059, 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: February 3, 1998

Refer Reply to: CC:DOM:P&SI:5 – PLR-119276-97

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

LEGEND:

Partnership = ***

Gen Partner = ***

Agency = ***

Project = ***

State X = ***

City Y = ***

District = ***

a = ***

b = ***

c = ***

d = ***

e = ***

f = ***

g = ***

h = ***

Dear ***

This letter responds to a letter dated September 30, 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 State X partnership formed in a for the purpose of developing, constructing, owning, and operating a housing project in City Y. The Partnership is a calendar year taxpayer using the accrual method of accounting. The District Office of the

Internal Revenue Service that has examination jurisdiction over the Partnership is District.

The Gen Partner submitted an application dated b for section 42 credits to the Agency. The request provided that the Project would consist of c buildings, with a total of d units in the Project. The Gen Partner on behalf of the Partnership ultimately entered into a e carryover allocation agreement for f in section 42 credits from the e ceiling.

At the time the Partnership and Agency entered into the carryover allocation agreement, the site plan had been changed to g buildings. The carryover allocation agreement shows g buildings, but the attachment to the agreement indicates c buildings. The Project's revised site plan contains the same number of units as originally indicated in the application for section 42 credits. The eligible basis of the Project remained unchanged.

The Agency represents that it intended to issue g building identification numbers (BINs) for the Project and allocate the section 42 credits over g buildings instead of c buildings. For the Agency, the number of buildings in the Project was not material to the execution of the carryover allocation because the change did not affect the amount of credit allocated to the Project, the ranking of the Project in its e allocations, or any other aspect of the carryover allocation for the Project.

The Agency and the Partnership are requesting permission under section 42(n) to correct the administrative error by amending the e carryover allocation to include BINs for the additional h buildings in the Project.

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 and the Partnership did not consistently identify the number of buildings in the e carryover allocation agreement. The carryover allocation shows g buildings, while the attached schedule and BINs show c buildings. This error did

not result from a misinterpretation of the applicable rules and regulations under section 42. The Agency's and Partnership's error resulted in an allocation document that did not accurately reflect the intent of the Agency and the Partnership at the time the e 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 and the Partnership committed an administrative error when they agreed to a carryover allocation agreement identifying c buildings in the Project, not g buildings;
2. Because of this administrative error, the e carryover allocation inaccurately reflects the intent of the Agency and the Partnership when the e 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 e carryover allocation to include a BIN for each of g buildings in the Project. On the amended e 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 the BINs already existing for the Project. The additional BINs must be sequentially numbered from the existing BINs; and
2. Attach a copy of the amended carryover allocation to an amended Form 8610, Annual

Low-Income Housing Credit Agencies Report, for e, 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.

In accordance with the power of attorney on file, a copy of this letter is being sent to your authorized legal representatives.

Sincerely yours,

Kathleen Reed

Assistant to the Branch Chief, Branch 5

Office of Assistant Chief Counsel (Passthroughs and Special Industries)