

Private Letter Ruling 9820015, 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 10, 1998

Refer Reply to: CC:DOM:P&SI:5 – PLR-119462-97

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

LEGEND:

Partnership = ***

Gen Partner = ***

Ltd Partner = ***

Agency = ***

Project = ***

State X = ***

City Y = ***

District = ***

a = ***

b = ***

c = ***

d = ***

e = ***

f = ***

g = ***

h = ***

i = ***

j = ***

k = ***

l = ***

m = ***

n = ***

o = ***

p = ***

q = ***
r = ***
s = ***
t = ***
u = ***
v = ***
w = ***
x = ***
y = ***

Dear ***

This letter responds to a letter dated October 13, 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 limited partnership with Gen Partner having an a partnership interest and Ltd Partner having a b partnership interest. The Partnership was formed to develop, construct, and operate a low-income housing apartment 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 Partnership owns the Project consisting of c buildings located in City Y. The Project contains d units including e two- bedroom units and f three-bedroom units. Of the f three-bedroom units, g are handicapped units. Construction of the Project was completed in phases with certificates of occupancy awarded for all c buildings on or before h. The Project was fully rented to qualifying low-income tenants as of i.

On j, the Partnership submitted an application to the Agency for section 42 credits with an eligible basis of k. Based on its review of the application, the Agency issued a reservation for section 42 credits for the Project in the amount of l. Due to changes in financing and construction costs, the Partnership submitted a supplemental application on m for additional section 42 credits due to the new eligible basis of n. Based on this submission, the Agency reserved section 42 credits for the Project in the amount of o.

Based on the supplemental application, the Agency and the Partnership executed a carryover allocation agreement dated p for the Agency's x section 42 credit authority, which inadvertently transposed the information for building g and r. The supplemental application identified building g as containing s two-bedroom units and s three-bedroom units with an eligible basis of t. Building r was identified as containing s two-bedroom units and a three-bedroom unit with an eligible basis of u. The transposition of the information for buildings g and r did not affect the total eligible basis of the Project.

However, it did reduce the eligible basis for building g reducing the amounts of section 42 credit allocated to the building. During preparation of the cost certification for the Project, the Partnership's accountant discovered the error in the carryover allocation agreement.

The Agency represents that when it allocated section 42 credits to the Project, 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, or any other aspect of the carryover allocation for the Project. It was the intent of the Agency that the allocation of eligible basis for buildings g and r set forth in the carryover allocation agreement be in accordance with the information submitted to the Agency by the Partnership in the supplemental application. The building identification number (BIN) for building g is v and the BIN for building r is w.

The Agency and the Partnership are requesting permission under section 42(n) to correct the administrative error by amending the carryover allocation agreement to correctly identify the number of units, eligible bases, and section 42 credits for buildings g and r.

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 inadvertently transposed the information for buildings g and r in the x carryover allocation agreement. The carryover allocation agreement incorrectly identifies the buildings from the supplemental application. 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 carryover allocation agreement 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 transposed the information for buildings g and r in the x carryover allocation agreement;
2. Because of this administrative error, the x carryover allocation agreement inaccurately reflects the intent of the Agency and the Partnership when the x carryover allocation agreement 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 x carryover allocation agreement and the Form 8609s, Low-Income Housing Credit Allocation Certification, to correct the transposition error described above for buildings g and r of the Project. On the x amended carryover allocation agreement and the amended Form 8609s for buildings g and r, the Agency will indicate that it is making the correction under section 1.42-13(b)(3)(iii)(A); and
2. Attach a copy of the amended x carryover allocation agreement to an amended Form 8610, Annual Low-Income Housing Credit Agencies Report, for x and file both the amended x carryover allocation agreement and the amended Form 8610 for x with the Service. Attach copies of the amended Form 8609s to an amended Form 8610 for y and mail copies of the amended Form 8609s to the Partnership. 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 the Agency's and Partnership's authorized legal representatives.

Sincerely yours,

Kathleen Reed

Assistant to the Branch Chief, Branch 5

Office of Assistant Chief Counsel (Passthroughs and Special Industries)