

Private Letter Ruling 9831034, 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: April 29, 1998

Refer Reply To: CC:DOM:P&SI:5 – PLR-106579-98

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

LEGEND:

Partnership = ***

Gen Partner = ***

Ltd Partners = ***

Agency = ***

Project = ***

City Y = ***

District = ***

a = ***

b = ***

c = ***

d = ***

e = ***

f = ***

g = ***

h = ***

i = ***

j = ***

k = ***

l = ***

m = ***

Dear = ***

This letter responds to a letter dated February 19, 1998, 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 was formed for the purpose of building, developing, owning, and operating a townhouse apartment complex consisting of a units in City Y. The Partnership, Gen Partner, and Ltd Partners use the accrual method of accounting. The Partnership and Ltd Partners are calendar year taxpayers and the Gen Partner uses a tax year ending b. The District Office of the Internal Revenue Service that has examination jurisdiction over the Partnership, Gen Partner, and Ltd Partners is the District.

In the application for the allocation of section 42 credits for the Project submitted to the

Agency, the Project was to consist of a townhouses arranged on the site in c buildings

containing d, d, and e units, respectively. While the application was pending before the Agency, the Partnership decided that because of certain site-specific grade conditions, the site would better accommodate the same a units and also increase the likelihood of obtaining required zoning variances and approvals if the units were reconfigured into f buildings containing q, g, e, and e units, respectively.

The Partnership represents that it failed to notify the Agency of the change to the site plan of the Project and the application continued to show incorrectly that the Project would consist of c buildings instead of f. The Agency executed a h Carryover Allocation agreement with the Partnership on i, in the amount of \$j. In the h Carryover Allocation agreement, the Project was assigned k project number and l building identification numbers (BINs).

The Partnership represents that at the time it received and executed the h Carryover Allocation agreement, the Partnership did not appreciate the significance of the lack of a BIN for all f buildings in the Project. It was not until m, before commencement of construction of the Project, and after numerous zoning variances and necessary building permits were obtained, that the Partnership realized that the application and the Carryover Allocation agreement should have shown f buildings and not c.

The Agency and the Partnership are requesting permission under section 42(n) to correct the administrative error by amending the h Carryover Allocation agreement to include BINs for all f 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 Partnership failed to inform the Agency that, due to problems with the site, the number of buildings in the Project had changed from c to f buildings before the h Carryover Allocation agreement was executed. 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 h 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 executed a Carryover Allocation agreement identifying c buildings in the Project, not f buildings;
2. Because of this administrative error, the h Carryover Allocation agreement inaccurately reflects the intent of the Agency and the Partnership when the h 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 take the following actions:

1. Amend the h Carryover Allocation agreement to include a BIN for each of f buildings in the Project. On the amended h Carryover Allocation agreement, 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 BIN must be sequentially numbered from the existing BINs; and

2. Attach a copy of the amended h Carryover Allocation agreement to an amended Form 8610, ANNUAL LOW-INCOME HOUSING CREDIT AGENCIES REPORT, for h, and file both the amended h Carryover Allocation agreement 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 the Partnership's authorized legal representative.

Sincerely yours,

Kathleen Reed

Assistant to the Branch Chief, Branch 5

Office of Assistant Chief Counsel (Passthroughs and Special Industries)