

Private Letter Ruling 9832036, 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 when it overallocated a low-income housing credit ceiling.

Full Text:

Date: May 12, 1998

Refer Reply to: CC:DOM:P&SI:5 PLR-101542-98

LEGEND:

Agency = ***

Project #1 = ***

Project #2 = ***

State = ***

Year 1 = ***

Year 2 = ***

Year 3 = ***

Year 4 = ***

City 1 = ***

a = ***

b = ***

c = ***

d = ***

e = ***

f = ***

g = ***

h = ***

i = ***

j = ***

k = ***

Dear ***

This letter responds to your letter of a, and subsequent submissions requesting a ruling under section 42(n)(4) of the Internal Revenue Code and section 1.42-13 of the Income Tax Regulations to allow the Agency to correct an administrative error that resulted in an

overallocation of low-income housing credits affecting State's Year 3 housing credit ceiling.

FACTS:

The Agency makes the following representations:

The Agency is the agency designated by State to administer the section 42 low-income housing tax credit program for State. The location of the District Office of the Internal Revenue Service that has examination jurisdiction over the Agency is City 1.

The Agency believes that it overallocated State's Year 3 housing credit ceiling by a total of \$b.

The circumstances that resulted in the overallocation arose from credit returned by Project 1. In Year 2, Project 1, which had been allocated \$c in credit in Year 1, returned \$b of its allocation that was properly reflected in the Agency's Year 2 Form 8610, Annual Low-Income Housing Credit Agencies Report. In Year 3, Project 1 returned the remaining \$d of its Year 1 allocation. On its Year 3 Form 8610, the Agency treated as returned credit the entire Year 1 allocation amount of \$c instead of the remaining portion of the allocation that was \$d. Consequently, returned credit was overstated by \$b.

The Agency allocated all of its credit ceiling in Year 3. Due to the failure to properly track the amount of credit returned by Project 1 in Year 3, the Agency overallocated available credit in Year 3 by \$b. The error in tracking the correct amount of credit was unintentional.

The last project to receive credit in Year 3 was Project 2. In Year 3, Project 2 received a project-based carryover allocation of \$e. The Agency's evaluation of the project indicates that the buildings in Project 2 were timely placed in service and that the credit allocation of \$e can be fully utilized. The Agency believes that Project 2 is entitled to receive the credit allocated in Year 3 and wishes to issue Forms 8609, Low-Income Housing Credit Allocation Certification, to Project 2 reflecting the Year 3 allocation. The Agency will not issue any Forms 8609 until a favorable ruling is received.

The Agency discovered its error in an effort to do a comprehensive audit of its files. The review of prior year allocation records began in f and was completed in g. Upon discovery of the error, the Agency made contact with affected taxpayers and with the Internal Revenue Service, which has resulted in the submission of this ruling request.

RULING REQUESTED

The Agency hereby requests permission pursuant to section 42(n)(4) to correct the

administrative error described herein by reducing State's Year 4 housing credit ceiling by the \$b amount overallocated in Year 3, plus interest, as determined by the Secretary.

As required under section 1.42-13(b)(3)(v), the Agency hereby agrees to such conditions as the Secretary considers appropriate if the above ruling request is granted.

LAW AND ANALYSIS:

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 creates 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.

The Agency committed an administrative error in Year 3 when it failed to properly track credit amounts returned to the Agency for that year. This error resulted in the Agency's improperly treating as returned credit \$b of credit that had previously been returned in Year 2 by Project 1. When this amount was allocated to Project 2, it resulted in an overallocation of State's Year 3 housing credit ceiling. We do not believe that this error was a misinterpretation of the applicable rules and regulations under section 42. This error resulted in a reporting document that inaccurately reflected the intent of the Agency at the time the document was originally completed. The Agency intended to allocate only those credit amounts that did not exceed State's Year 3 housing credit ceiling, but due to an administrative error, the Agency exceeded State's Year 3 housing credit ceiling. Thus, a correctable administrative error occurred in this situation.

Under the represented facts, the Form 8610 filed by the Agency for Year 3 is the reporting document that inaccurately reflects the intent of the Agency at the time the document was completed. Under section 1.42-13(b)(3)(iii)(B), the Secretary must pre-approve a correction of 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 affects the determination of any component of the State's housing credit ceiling under section 42(h)(3)(C). The correction of the Agency's administrative error would affect the determination of various components of State's housing credit ceiling under section 42(h)(3)(C) for Year 3 because these components reflect inaccurate credit amounts. Thus, to correct its administrative error, the Agency must obtain the Secretary's prior approval.

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

1. The Agency committed an administrative error in Year 3 when it failed to properly track credit amounts returned to the Agency for that year;
4. Because of this administrative error, the Form 8610 filed by the Agency for Year 3 inaccurately reflects the intent of the Agency at the time the Form was executed; and
5. The Agency attempted to correct this administrative error within a reasonable period of time after it became aware of the error.

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

1 Reduce State's total Year 4 housing credit ceiling by \$h. This amount represents the \$b in overallocated credit for Year 3, plus interest, compounded annually. The interest is calculated as the average of the annual Federal mid-term rate and the annual Federal long-term rate under section 1274(d)(1) for i, applied to the period beginning j through k.

2. The \$h reduction of State's Year 4 housing credit ceiling must be reflected on the line of the Year 4 Form 8610 that represents \$1.25 multiplied by the state population. The Agency should asterisk this line and briefly explain at the bottom of the Form 8610 that this line amount reflects the corrections required by this letter ruling. When filed, a copy of this letter ruling must also be attached to the Form 8610.

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 Project 2 otherwise qualifies for the low-income housing tax credit under section 42.

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

Assistant to the Branch Chief, Branch 5

Office of the Assistant Chief Counsel (Passthroughs and Special Industries)