

Treasury Decision 8521, 26, CFR, IRC Sec(s). 42

AGENCY:

Internal Revenue Service (IRS), Treasury.

ACTION:

Final regulations.

SUMMARY:

This document contains final regulations concerning the Secretary's authority to provide guidance necessary or appropriate to carry out the purposes of section 42, the low-income housing credit. This document also contains final regulations allowing State and local housing credit agencies to correct administrative errors and omissions made in connection with allocations of low-income housing credit dollar amounts and recordkeeping within a reasonable period after their discovery. The final regulations affect State and local housing credit agencies, owners of buildings or projects for which the low-income housing credit is allocated, and taxpayers claiming the low-income housing credit.

DATES:

These final regulations are effective February 24, 1994.

For applicability of these regulations, see §1.42-13(d) of these regulations.

FOR FURTHER INFORMATION CONTACT:

Jeffrey A. Erickson, 202-622-3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-1357. The estimated annual burden per respondent varies from 1 hour to 2 hours, depending on individual circumstances, with an estimated average of 1.5 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On January 4, 1993, a notice of proposed rulemaking (PS-50-92) was published in the Federal Register (58 FR 44) proposing amendments to the Income Tax Regulations (26 CFR part 1) under section 42 of the Internal Revenue Code.

Written comments responding to the notice were received, and a public hearing was held on April 5, 1993. After consideration of all written and oral comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Explanation of Provisions

Changes Made by the Final Regulations

The proposed regulations generally describe an administrative error and omission and include illustrative examples. Commentators have requested that the final regulations include an "accounting error" as an administrative error or omission. The Service and the Treasury Department are concerned that the term "accounting error" is too vague. However, in order to address the commentators' concerns, the final regulations clarify that an administrative error or omission includes an error in tracking the housing credit dollar amount an Agency has allocated (or that remains to be allocated) in a calendar year. For example, assume an Agency, believing that it has \$100 of credit remaining in its credit ceiling for the current calendar year, allocates \$100 to a project and agrees to allocate an additional \$30 from the next calendar year's credit ceiling. Later, in the current calendar year, the Agency discovers that it failed to include in its credit ceiling for the current calendar year \$50 of credits that were returned in the current calendar year. The error in tracking the \$50 of credits that were returned is an administrative error or omission.

One commentator asked for clarification of the correction procedure an Agency should use when correcting a document without the Secretary's prior approval. Under the final regulations, a document that corrects a document containing an error or omission that has not yet been filed with the Internal Revenue Service should be filed as the original. If a document containing an error has already been filed with the Internal Revenue Service, the Agency should refile a copy of the document containing the error that prominently and clearly notes the correction. The Agency should indicate at the top of the document(s) that the correction is being made under §1.42-13 of the Income Tax Regulations.

The proposed regulations require that an Agency obtain the prior approval of the Secretary to correct an administrative error or omission if (1) the correction is not made before the close of the calendar year of the error or omission, and (2) the correction is a numerical change to the housing credit dollar amount allocated for the building or project. One commentator suggested that an Agency should have until February 28, the date by which an Agency must file its Form 8610, to correct an administrative error or omission that changes the housing credit dollar amount allocated to a building or project without obtaining the Secretary's prior approval. Another commentator made a similar suggestion solely for credits returned in the same year in which they were allocated. These suggestions have not been adopted. Section 42(h)(1) requires that an allocation for a certain calendar year be made by the close of that calendar year. Consistent with that approach, these regulations do not permit an Agency to make a post-year allocation without the Secretary's prior approval. Of course, for a correction of an administrative error or omission that an

Agency cannot correct on its own, an Agency, or the Agency and the affected taxpayer, may seek the Secretary's prior approval.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of the proposed regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jeffrey A. Erickson, Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1-INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority:

26 U.S.C. 7805 .

Section 1.42-13 also issued under 26 U.S.C. 42(n); .

Par. 2. Section 1.42-13 is added to read as follows:

§1.42-13 Rules necessary and appropriate; housing credit agencies' correction of administrative errors and omissions.

(a) Publication of guidance. Under section 42(n), the Secretary has authority to prescribe regulations as may be necessary or appropriate to carry out the purposes of section 42. The Secretary may also provide guidance through various publications in the Internal Revenue Bulletin. (See § 601.601(d)(2)(ii)(b) of this chapter.)

(b) Correcting administrative errors and omissions-(1) In general. An Agency may correct an administrative error or omission with respect to allocations and recordkeeping, as described in paragraph (b)(2) of this section, within a reasonable period after the Agency discovers the administrative error or omission. Whether a correction is made within a reasonable period depends on the facts and circumstances of each situation. Except as provided in paragraph (b)(3)(iii) of this section, an Agency need not obtain the prior approval of the Secretary to correct an administrative error or omission, if the correction is made in accordance with paragraph (b)(3)(i) of this section. The administrative errors and omissions to which this paragraph (b) applies are strictly limited to those described in paragraph (b)(2) of this section, and, thus, do not include, for example, any misinterpretation of the applicable rules and regulations under section 42. Accordingly, an Agency's allocation of a particular calendar year's low-income housing credit dollar amount made after the close of that calendar year, or the use of an incorrect population amount in calculating a State's housing credit ceiling for a calendar year are not administrative errors that can be corrected under this paragraph (b).

(2) Administrative errors and omissions described. An administrative error or omission is 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. Administrative errors and omissions described in this paragraph (b)(2) include the following-

(i) A mathematical error;

(ii) An entry on a document that is inconsistent with another entry on the same or another document regarding the same property, or taxpayer;

(iii) A failure in tracking the housing credit dollar amount an Agency has allocated (or that remains to be allocated) in the current calendar year (e.g., a failure to include in its State housing credit ceiling a previously allocated credit dollar amount that has been returned by a taxpayer);

(iv) An omission of information that is required on a document; and

(v) Any other type of error or omission identified by guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(b) of this chapter) as an administrative error or omission covered by this paragraph (b).

(3) Procedures for correcting administrative errors or omissions-(i) In general. An Agency's correction of an administrative error or omission, as described in paragraph (b)(2) of this section, must amend the document so that the corrected document reflects the original intent of the Agency, or the Agency and the affected taxpayer, and complies with applicable rules and regulations under section 42.

(ii) Specific procedures. If a document corrects a document containing an administrative error or omission that has not yet been filed with the Internal Revenue Service, the Agency, or the Agency and the affected taxpayer, should complete and file the corrected document as the original. When a document containing an administrative error or omission has already been filed with the Service, the Agency, or the Agency and the affected taxpayer, should refile a copy of the document containing the administrative error or omission, and prominently and clearly note the correction thereon or on an attached new document. The Agency should indicate at the top of the document(s) that the correction is being made under §1.42-13 of the Income Tax Regulations.

(iii) Secretary's prior approval required. An Agency must obtain the Secretary's prior approval to correct an administrative error or omission, as described in paragraph (b)(2) of this section, if the correction is not made before the close of the calendar year of the error or omission and the correction-

(A) Is a numerical change to the housing credit dollar amount allocated for the building or project;

(B) Affects the determination of any component of the State's housing credit ceiling under section 42(h)(3)(C); or

(C) Affects the State's unused housing credit carryover that is assigned to the Secretary under section 42(h)(3)(D).

(iv) Requesting the Secretary's approval. To obtain the Secretary's approval under paragraph (b)(3)(iii) of this section, an Agency must submit a request for the Secretary's approval within a reasonable period after discovering the administrative error or omission, and must agree to any conditions that may be required by the Secretary under paragraph (b)(3)(v) of this section. When requesting the Secretary's approval, the Agency, or the Agency and the affected taxpayer, must file an application that complies with the requirements of this paragraph (b)(3)(iv). For further information on the application procedure see Rev. Proc. 93-1, 1993-1 I.R.B. 10 (or any subsequent applicable revenue procedure). (See §601.601(d)(2)(ii)(b) of this chapter.) The application requesting the Secretary's approval must contain the following information-

(A) The name, address, and identification number of each affected taxpayer;

(B) The Building Identification Number (B.I.N.) and address of each building or project affected by the administrative error or omission;

(C) A statement explaining the administrative error or omission and the intent of the Agency, or of the Agency and the affected taxpayer, when the document was originally completed;

(D) Copies of any supporting documentation;

(E) A statement explaining the effect, if any, that a correction of the administrative error or omission would have on the housing credit dollar amount allocated for any building or project; and

(F) A statement explaining the effect, if any, that a correction of the administrative error or omission would have on the determination of the components of the State's housing credit ceiling under section 42(h)(3)(C) or on the State's unused housing credit carryover that is assigned to the Secretary under section 42(h)(3)(D).

(v) Agreement to conditions. To obtain the Secretary's approval under paragraph (b)(3)(iii) of this section, an Agency, or the Agency and the affected taxpayer, must agree to the conditions the Secretary considers appropriate.

(c) Examples. The following examples illustrate the scope of this section:

Example 1. Individual B applied to Agency X for a reservation of a low-income housing credit dollar amount for a building that is part of a low-income housing project. When applying for the low-income housing credit dollar amount, B informed Agency X that B intended to form Partnership Y to finance the project. After receiving the reservation letter and prior to receiving an allocation, B formed Partnership Y and sold partnership interests to a number of limited partners. B contributed the low-income housing project to Partnership Y in exchange for a partnership interest. B and Partnership Y informed Agency X of the ownership change. When actually allocating the housing credit dollar amount, Agency X sent Partnership Y a document listing B, rather than Partnership Y, as the building's owner. Partnership Y promptly notified Agency X of the error. After reviewing related documents, Agency X determined that it had incorrectly listed B as the building's owner on the allocation document. Since the parties originally intended that Partnership Y would receive the allocation as the owner of the building, Agency X may correct the error without obtaining the Secretary's approval, and insert Partnership Y as the building's owner on the allocation document.

Example 2. Agency Y allocated a lower low-income housing credit dollar amount for a low-income housing building than Agency Y originally intended. After the close of the calendar year of the allocation, B, the building's owner, discovered the error and promptly notified Agency Y. Agency Y reviewed relevant documents and agreed that an error had occurred. Agency Y and B must apply, as provided in paragraph (b)(3)(iv) of this section, for the Secretary's approval before Agency Y may correct the error.

(d) Effective date. This section is effective February 24, 1994. However, an Agency may elect to apply these regulations to administrative errors or omissions that occurred before the publication of these regulations. Any reasonable method used by a State or local housing credit agency to correct an administrative error or omission prior to February 24, 1994, will be considered proper, provided that the method is consistent with the rules of section 42.

PART 602-OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority:

26 U.S.C. 7805.

§602.101 (Amended)

Par. 4. Section 602.101(c) is amended by adding in numerical order the entry "1.42-13.....1545-1357" to the table.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: January 25, 1994.

Samuel Y. Sessions,

Acting Assistant Secretary of the Treasury.