

**Internal Revenue Service**

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**Washington, DC 20044**

**Person to Contact:**

**Telephone Number:**

**Refer Reply To:**

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**Date:**

**November 10, 1999**

**Legend:**

Partnership =

State =

City =

Project =

Agency =

Managing  
General Partner =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

Dear :

This letter responds to your letter dated August 17, 1999, and subsequent correspondence, submitted on behalf of Agency and Partnership, requesting a private letter ruling under § 42(n)(4) of the Internal Revenue Code and § 1.42-13(b) of the Income Tax Regulations to correct an administrative error in an allocation of the low-income housing tax credit dollar amounts.

Agency and Partnership represent that the facts are as follows:

**FACTS:**

Partnership, a State limited partnership, is engaged principally in the business of developing land and constructing and operating a residential rental project located in City. The Project consists of a buildings containing b residential units (including a manager unit and a unit for the maintenance person), a community building, and an office/maintenance building. Partnership expects that all of the units will qualify for low-income housing tax credits under § 42.

The Project was initially planned as a newly-constructed residential rental project consisting of c buildings containing a total of b residential units, (including a manager unit and a unit for the maintenance person), a community building, and an office/maintenance building. This preliminary plan was in effect on d when Partnership submitted its application for low-income housing tax credits. Partnership attached this plan to the tax credit application.

In early e, the site plan was finalized, and it was determined that the Project required an additional building to house all of the residential units, bringing the total number of residential buildings in the Project to a.

On f, Partnership submitted a carryover allocation application to Agency for preparation of the g carryover allocation. Due to a clerical error on the part of Managing General Partner, the application was completed incorrectly. Managing General Partner mistakenly listed only h residential buildings on the carryover allocation application, even though the third-party plan and cost review attached to the application discussed the correct number of buildings.

On i, Agency issued an allocation of low-income housing tax credits for the Project in the amount of \$j. In addition, h building identification numbers (BINs) for h property addresses were issued. However, since k of the Project's residential buildings were not listed in the carryover allocation application, they were not issued BINs. These additional BINs are necessary in order to correctly complete the Project's Forms 8609 and to properly determine each building's share of the housing credit dollar amount.

Agency and Partnership, at the time of the g carryover allocation, intended for BINs to be issued for all of the residential buildings in the Project. Thus, the carryover allocation did not reflect the intent of Agency or Partnership.

This error was not discovered until early l, when Managing General Partner was reviewing documents in anticipation of the preparation of the cost certification by Partnership's accountants. Upon discovery of the mistake, Managing General Partner and Partnership's accountants immediately contacted Partnership's attorneys to prepare a ruling request to correct the error and omission.

In connection with the above statement of facts, Agency represents that: (1) it intended to make a project-based allocation to the Project pursuant to § 42(h)(1)(F); (2) the number of buildings in the Project was not material to the carryover allocation for the Project; and (3) the fact that the Project had a existing residential buildings rather than h would not have affected (a) the amount of low-income housing tax credit allocated to the Project, (b) the ranking of the Project in Agency's g allocation round, or (c) any other aspect of the carryover allocation for the Project.

#### **RULING REQUESTED:**

Agency and Partnership request the Internal Revenue Service to rule that Agency may amend the g carryover allocation to include a BIN for the k additional residential buildings in the Project and allocate the appropriate amount of low-income housing tax credit to each of the a existing residential buildings in the Project, not exceeding \$j for the entire Project. As required under § 1.42-13(b)(3)(v), Agency and Partnership agree to such conditions as the Secretary considers appropriate if the above ruling request is granted.

#### **LAW AND ANALYSIS:**

Under § 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 § 42.

In the present case, Partnership committed an administrative error when the application for low-income housing tax credits referenced h buildings when the actual number of residential buildings was a. This error was not a misinterpretation of the applicable rules and regulations under § 42. However, as a result of this error, the g carryover allocation did not accurately reflect the intent of Agency and Partnership at the time the document was executed. The intent of Agency was to allocate the same amount of credit to the Project, notwithstanding the number of the buildings in the Project. Further, the change does not affect the amount of housing credit dollar amount allocated to the Project, the ranking of the Project in Agency's g allocation round, nor any other aspect of the carryover allocation for the Project. Thus, a correctable administrative error occurred in this situation.

Under the represented facts, the g carryover allocation is the credit allocating document. Under § 1.42-13(b)(3)(iii)(A), 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 requires a numerical change to the credit amount allocated for the building or project. In the present case, the correction would involve a numerical change to the credit amount allocated to the h buildings that properly received BINs.

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

1. Partnership committed an administrative error when it failed to identify the actual number of residential buildings in the Project in the tax credit application submitted to Agency;
2. Because of that administrative error, the g carryover allocation inaccurately reflects the intent of Agency and Partnership when the g carryover allocation was executed;
3. Agency and Partnership requested to correct the administrative error within a reasonable period of time after becoming aware of the administrative error;

4. Agency will assign k additional BINs to accurately reflect that there are a residential buildings in the Project; and
5. Agency will allocate low-income housing tax credit to each of the a residential buildings in the Project, not exceeding \$j for the entire Project.

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

1. Amend the g carryover allocation to include a BIN for the k additional residential buildings in the Project and to allocate the appropriate amount of low-income housing tax credit to each of the a residential buildings in the Project, not exceeding \$j for the entire Project. The new BINs do not have to be in sequential order with the existing h BINs and the existing h BINs shall continue in effect. On the amended g carryover allocation, Agency should indicate that it is making the correction under § 1.42-13(b); and
2. Attach a copy of the amended g carryover allocation to an amended Form 8610, Annual Low-Income Housing Credit Agencies Report, for g, and file the amended Form 8610 with the Service. When completing the amended Form 8610, 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 § 42 nor the validity of the Project's costs included in eligible basis.

In accordance with the power of attorney filed with this request, we are sending a copy of this letter ruling to Partnership's first-listed authorized representative.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,  
Harold E. Burghart  
Assistant to the Branch Chief, Branch 5  
Office of Assistant Chief Counsel  
(Passthroughs and Special Industries)

Enclosure: 6110 copy