

Internal Revenue Service

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Department of the Treasury

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CC:DOM:P&SI:5-PLR-122327-98
Date:
January 15, 1999

Legend:

Partnership =

Agency =

State =

Project =

City =

General Partner =

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 =

z =

aa =

bb =

cc =

dd =

Dear :

This letter responds to your letter dated December 11, 1998, that was submitted on behalf of Agency and Partnership, requesting a 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 credit dollar amounts.

Partnership represents that the facts are as follows:

FACTS:

Partnership is a State limited partnership that was formed on a for the purpose of building, developing, owning, and operating a b unit apartment complex known as the Project located in City. All of the units in the Project were intended for occupancy as low-income units within the meaning of § 42(i)(3).

An application for c low-income housing tax credits for the Project was submitted to Agency on d. As reflected in the application, the Project originally was designed to consist of b residential units in e residential buildings and f common building. The application further specified that the eligible basis of the Project would be \$g. Because h percent of the units were intended for rental to qualified low-income tenants, the application specified that the qualified basis of the Project also would be \$g. Accordingly, Partnership requested a low-income housing tax credit allocation in the amount of \$i. On j, Agency issued a revised commitment notice reserving low-income housing tax credits for the Project in the amount of \$k. The low-income housing tax credit percentage was fixed at l percent which reduced the allocation to \$m.

Subsequent to submission of the low-income housing tax credit application on d, the site was reconfigured to address various fire code limitations, drainage, and fire access land requirements. The site plan for the Project was finalized by the architect and called for the construction of n residential buildings, consisting of b units and f common building.

Partnership submitted a carryover allocation form on o to Agency, showing that it would have an accumulated basis in the Project as of p, equal to at least \$q, representing approximately r percent of the reasonably anticipated total basis in the Project of \$s. Nothing in the carryover allocation form or in any other material submitted to Agency at that time in any way indicated that the number of buildings in the Project had changed. Although Partnership was aware in t that the finalized plans called for the Project to have n residential buildings, the preparer of Partnership's carryover allocation form, however, was unaware of this change and believed that the

Project was to consist of e residential buildings and completed the carryover allocation form accordingly. The change in the configuration of the Project was made prior to p.

Agency signed the Carryover Allocation of c Tax Credit Authority on u. The carryover allocation was a project-based allocation identifying a lump-sum of \$m. The Carryover Qualification Worksheet, however, identified the number of residential buildings in the Project as e, because Agency was not informed of the change in the number of buildings prior to the date on which the carryover allocation was issued, and, thus, only e building identification numbers (BINs) were issued for the Project.

In v, after reviewing the application files in preparation for supplying the final cost certification forms and other information necessary to obtain Forms 8609, Low-Income Housing Credit Allocation Certification, Partnership discovered the error in the c carryover allocation, and began discussions with Agency on the need for a private letter ruling. Partnership then began to assemble the information necessary to request a private letter ruling and submitted a draft request to Agency for review.

Counsel for General Partner began preparing a draft private letter ruling in early w, and submitted a draft to General Partner on x, requesting additional information. For months thereafter, counsel tried repeatedly to complete the private letter ruling, but was unsuccessful in obtaining sufficient information from General Partner to do so.

In early y, the limited partner began negotiations with General Partner to remove General Partner from Partnership. Removal was effective z.

The Project was completed and all buildings were placed in service from aa through bb. On cc, Partnership submitted a cost certification, including a project cost schedule, and n individual building cost certification forms to Agency. However, Partnership requires issuance of additional BINs before the Forms 8609 can be issued by Agency.

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 n residential buildings rather than e 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 c allocation round, or (c) any other aspect of the carryover allocation for the Project.

RULING REQUESTED:

Agency and Partnership request a ruling that Agency can amend the c carryover allocation to include dd additional BINs for each of the additional residential buildings in the Project pursuant to § 42(n) of the Code and 1.42-13(b) of the regulations. As required by § 1.42-13(b)(3)(v), Agency and Partnership hereby 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 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 omission when it failed to inform Agency that the number of residential buildings in the Project had changed from e to n buildings before the c carryover allocation was issued. This omission did not result from a misinterpretation of the applicable rules and regulations under § 42. However, the omission did result in a document (i.e., c carryover allocation) that did not accurately reflect the intent of Agency and Partnership at the time the document was executed. The intent of Agency was to make a project-based allocation to the Project and not to a specific building in the Project. Further, the change does not affect the housing credit dollar amount allocated to the Project nor the ranking of the Project in Agency's c allocation round, nor any other aspect of the carryover allocation for the Project. Thus, a correctable administrative omission occurred in this situation.

Under the represented facts, the c 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 e buildings that 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 omission when it failed to inform Agency that the number of buildings in the Project had increased as a result of the change in site plan;
2. Because of this administrative omission, the c carryover allocation inaccurately reflects the intent of Agency and Partnership at the time the c carryover allocation was executed;
3. Agency and Partnership requested approval to correct the administrative omission within a reasonable period of time after Agency became aware of the administrative omission; and

4. Agency will issue BINs to the dd residential buildings added to the Project under the revised site plan.

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

1. Amend the c carryover allocation to include BINs for the dd buildings added to the Project. On the amended c carryover allocation, Agency should indicate that it is making the correction under § 1.42-13(b); and
2. Attach a copy of the amended c carryover allocation to an amended Form 8610, Annual Low-Income Housing Credit Agencies Report, for c, 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 powers of attorney filed with this request, we are sending copies of this letter ruling to Agency's first and second authorized representatives, Partnership, and Partnership's first 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,

Susan Reaman

Susan Reaman
Chief,
Branch 5
Office of Assistant Chief Counsel
(Passthroughs and Special
Industries)

Enclosure: 6110 Copy