

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Date:

February 2, 1999

LEGEND:

Agency =

Partnership =

City 1 =

City 2 =

City 3 =

Address =

Project =

General Partner 1 =

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General Partner 2 =

General Partner 3 =

General Partner 4 =

a =

b =

c =

d =

e =

f =

i =

j =

k =

l =

Dear

This letter responds to your authorized representative's letter dated a on behalf of Partnership and Agency requesting a ruling under § 42(n) of the Internal Revenue Code and § 1.42-13(b) of the Income Tax Regulations to allow Partnership and Agency to correct an administrative error or omission in an allocation of low-income housing credit dollar amounts. The Internal Revenue Service District Office that will have examination jurisdiction over the Partnership and the general partners is located in City 1. The Internal Revenue Service District Office that will have examination jurisdiction over the limited partners is located in City 2.

The relevant facts as represented in your submission is set forth below.

FACTS:

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Project is located at Address. As originally contemplated by Partnership, Project consisted of b buildings containing c residential units. Upon that basis, Partnership first applied to Agency in d for an allocation of \$e in low-income housing tax credits for Project.

At the time of the application for credits, Partnership was under the control of General Partner 1 and General Partner 2 (original general partners). On f, Agency issued a carryover allocation of d credits for Project in the amount of \$e. In d, Agency also assigned b building identification numbers (BINs), one to each of Project's b anticipated buildings in accordance with Partnership's initial request. The understanding that Project would consist of b buildings was based upon initial design information the original general partners of Partnership had received from Project's architect. However, before General Partner 3 and General Partner 4 (current general partners) came into Partnership, the original design was modified to contain i buildings. There was no information conveyed to the current general partners by any prior general partners at the time the current general partners were admitted into Partnership as to why Partnership had redesigned i buildings while only requesting b BINs.

In summary, final resolution of Project's design occurred in j, which was subsequent to the d carryover allocation and issuance of the b BINs. At the time the design plan was completed and approved by City 3, and for some time thereafter, the current general partners were unaware of the discrepancy between the number of buildings that had been approved by the local planning process (i.e., i), and the number of BINs previously assigned to Project.

It was not until k that the current general partners discovered that Partnership had an insufficient number of BINs. This occurred when Partnership submitted its "placed in service package" to Agency. Subsequently, Partnership and Agency attempted to resolve the problem informally but determined, through advice of legal counsel in late l that, pursuant to § 1.42-13(b), the Secretary's approval would be required to have the number of Forms 8609, Low-Income Housing Credit Allocation Certifications, issued that correspond to the actual number of buildings in Project.

Agency represents that it intended to make a project-based allocation to Project pursuant to § 42(h)(1)(F) and that the number of buildings in Project was not material either to its initial reservation of credits or to its subsequent carryover allocation of the credit reserved. Agency also represents that the fact that Project has i buildings rather than b does not affect the amount of the housing credit dollar amount allocated to Project, the ranking of Project, Agency's requirements for allocations, or any other aspect of the carryover allocation for Project.

RULING REQUESTED:

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Partnership and Agency request the Service to rule that Agency can amend the d carryover allocation to include a BIN for each of the b buildings added to Project after the d carryover allocation was made.

As required under § 1.42-13(b)(3)(v) of the regulations, Partnership and Agency hereby agree to such conditions as the Secretary considers appropriate if the above ruling request is granted.

LAW AND ANALYSIS:

Under § 42(n)(4) of the Code, 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) of the regulations 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 § 42.

Partnership committed an administrative error when it failed to inform Agency of the correct number of buildings in Project. We do not believe that this error was a misinterpretation of the applicable rules and regulations under § 42. This error created a document (i.e., carryover allocation) that inaccurately reflects the intent of Partnership and Agency at the time the document was originally completed. The intent of Agency was to allocate the same amount of credit to Project, notwithstanding the number of buildings in Project. Further, the change does not affect the amount of housing credit dollar amount allocated to Project nor the ranking of Project in Agency's d allocation round, nor any other aspect of the carryover allocation for Project. Thus, a correctable administrative error occurred in this situation.

Under the represented facts, the d 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 to a building or project. This correction would involve a numerical change to the credit amount allocated to the b buildings that initially received BINs.

After applying the relevant law and regulations to the facts submitted and the representations set forth above, we rule as follows:

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1. Partnership committed an administrative error when it failed to inform Agency of the correct number of buildings in Project;
2. Because of that administrative error, the carryover allocation inaccurately reflects the intent of Partnership and Agency at the time the carryover allocation was made;
3. Partnership and Agency requested approval within a reasonable period of time after they became aware of the administrative error; and
4. Agency will issue a BIN for each of the b buildings added to Project after the d carryover allocation was made.

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

1. Amend the carryover allocation to include a BIN for each of the b buildings added to Project after the d carryover allocation was made. On the amended carryover allocation, Agency should indicate that it is making the correction under § 1.42-13(b), and
2. Attach a copy of the amended carryover allocation to an amended Form 8610 and file the amended Form 8610. 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 credit under § 42.

This ruling is directed only to Partnership and Agency. 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 the Assistant
Chief Counsel
(Passthroughs and Special
Industries)

Enclosure: 6110 Copy