

## Internal Revenue Service

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## Department of the Treasury

Washington, DC 20224

Person to Contact:

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Date:

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### Legend:

Partnership =

State =

Project =

City =

Agency =

Gen Partner =

Assigned BINs =

Permits =

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 =

Dear :

This letter responds to your letter dated September 1, 1999, 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 administrative errors in an allocation of the low-income housing credit dollar amounts.

Agency and Partnership represent that the facts are as follows:

**FACTS:**

Partnership is a State limited partnership formed to acquire, develop, operate and manage the Project. The Project is a b-unit low-income housing project located in City. On a, Partnership submitted an application to Agency showing that the b-unit Project would consist of c residential buildings and d community building. On e, Agency issued a report confirming the b-unit, c-building Project. On f, Agency issued a reservation letter to Partnership for the Project.

On g, Agency was notified that Gen Partner was taking over the Project and would be admitted as the substitute general partner to Partnership. On h, Agency issued a letter authorizing the substitution of Gen Partner as the new general partner for Partnership. On h, Partnership submitted the carryover allocation document to Agency. The carryover allocation document stated that the c-residential building Project would consist of i newly constructed buildings and d rehabilitated building. On j, Agency issued the w carryover allocation document and assigned c building identification numbers (BINs) for the Project's buildings, the Assigned BINs.

In k, Gen Partner determined that the Project had to be redesigned to meet design standards for the Permits. New plans for the Project were completed in l and the redesign was deemed complete on m. On n, Gen Partner informed Agency by letter of the design changes to the Project, but only as to the changes relating to the rehabilitation of d building. The letter did not address the number of buildings but only that the Project would consist of all newly constructed buildings. Attached to the letter were reduced plans and color renderings of the new Project.

On o, Agency acknowledged by letter that the Project would consist solely of all new construction and requested revisions to the application for low-income housing credits. On p, Gen Partner sent a letter to Agency with revised application pages. On q, Agency approved the changes to the Project. On r, the Permits were issued. The Permits were recorded on s. The Permits indicated that the Project would include b units in t u-story buildings.

In v, counsel to the investor limited partner of Partnership noted the discrepancy in the BINs set forth in the Project's carryover allocation document and the number of buildings described in the Project's redesign plan and the address of the new building. The parties conferred with Agency regarding amending the w carryover allocation document to reflect the correct number of BINs and addresses for the t buildings in the Project. On x, Gen Partner sent a letter to Agency requesting Agency's consent to participate in obtaining the Internal Revenue Service's approval for the increase in the number of BINs from c to t for the Project. On y, Agency issued a letter to Gen Partner agreeing to participate in the request for the Service's approval.

Agency and Partnership represent that the fact that the Project will have t buildings instead of c buildings does not affect: (1) the amount of housing credit dollar amounts allocated to the Project; (2) the ranking of the Project in Agency's w allocation round; (3) any other aspect of the carryover allocation for the Project; (4) the determination of the components of State's housing credit ceiling under § 42(h)(3)(C); and (5) State's unused housing credit carryover that was assigned to the Secretary for allocation under § 42(h)(3)(D). Agency, Partnership and Gen Partner agree to any conditions as the Secretary considers appropriate if the ruling is granted.

### **RULING REQUESTED:**

Agency and Partnership request permission pursuant to § 42(n)(4) to correct the administrative errors by amending the w carryover allocation document to provide for the d additional BIN and the correct address of d building that is newly constructed and not rehabilitated. On the amended carryover allocation document, Agency will indicate that it is making the correction under § 1.42-13(b).

### **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, Agency and Partnership committed administrative errors when the w carryover allocation document did not correctly reference t buildings and the corrected address for d building from the redesigned plans for the Project. These errors were not a misinterpretation of the applicable rules and regulations under § 42. However, as a result of these errors, the w carryover allocation document 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 low-income housing credits to the Project, notwithstanding the fact that Agency issued only c BINs for 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 w allocation round, nor any other aspect of the carryover allocation for the Project. Thus, correctable administrative errors occurred in this situation.

Under the represented facts, the w 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 c buildings that properly received BINs.

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

1. Agency and Partnership committed administrative errors when they failed to identify in the carryover allocation document for the Project the number of residential buildings as t and the address for the d building that was newly constructed and not rehabilitated;
2. Because of these administrative errors, the w carryover allocation inaccurately reflects the intent of Agency and Partnership when the w carryover allocation document was executed;
3. Agency and Partnership requested to correct the administrative errors within a reasonable period of time after becoming aware of the errors;
4. Agency will assign d additional BIN to accurately reflect that there are t residential buildings in the Project and correct the address for the d building that was newly constructed and not rehabilitated; and
5. Agency will allocate low-income housing credits to each of the t residential buildings in the Project.

To correct these administrative errors, Agency must do the following:

1. Amend the w carryover allocation for the Project to include the BIN for the d additional building and the corrected address for d building that was newly constructed and not rehabilitated, and allocate the appropriate amount of low-income housing credit to each of the t buildings in the Project. If possible, the new BIN should be in sequential order with the Assigned BINs and the Assigned BINs shall continue in effect. On the amended w carryover allocation document, Agency should indicate that it is making the correction under § 1.42-13(b); and
2. Attach a copy of the amended w carryover allocation document to an amended Form 8610, "Annual Low-Income Housing Credit Agencies Report," for w, 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 credit under § 42.

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.

In accordance with the power of attorney on file, a copy of this letter is being sent to Partnership's authorized legal representative.

Sincerely yours,

HAROLD E. BURGHART  
Assistant to the Branch Chief, Branch 5  
Office of Assistant Chief Counsel  
(Passthroughs and Special Industries)

Enclosure:  
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