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Internal Revenue Service

Index No.: 42.14-01

Department of the Treasury

P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:5 — PLR-114517-99
Date:

OCT 28 1999

Legend:

Partnership =

General Partner =

Township =

State

Project =

City =

Agency =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

o =

p =

q =

r =

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u =

Dear

This letter responds to your letter dated August 24, 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 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 was formed on a as a State limited partnership under the relevant provisions of State law. Partnership was formed to acquire, develop, and operate low-income housing projects located near the City.

On b, General Partner of the Partnership prepared the initial application for low-income housing tax credits for the Project. The application disclosed a total of c residential units housed in the project's d buildings (e residential buildings and f clubhouse). The number of buildings was estimated based on a site plan.

On g, the Partnership was awarded low-income housing tax credits in the amount of $h, for d buildings. On i, the Partnership submitted an application for a carryover allocation of tax credits showing a total of e buildings - - j residential buildings and f clubhouse. The number of buildings for this document was based on a site plan drawn by one of the Partnership's engineers that included the same c residential units that were the basis of the original Application.

On k, engineers engaged by the Township to review the site plan issued a report that required revisions to meet Township zoning requirements regarding parking.

On l, the site plan was redrawn to accommodate the Township's request for better parking adjacent to building m, which was made as part of their site plan review of the project. As a result, the new site plan shows building m split into n buildings, new m and o, which together contain the same number of units as the old m building.

On p, the Partnership received a carryover allocation of tax credits in the amount of $h from the Agency. The number of buildings disclosed in the carryover allocation letter was j based on the number of residential buildings included in the Partnership's q application for credit carryover.

On r, the Township Board held an executive session and approved the environmental impact assessment related to the revised site plan for the Project.

On s, the Partnership submitted an application for low-income housing tax credit commitment to the Agency. In the application the number of buildings disclosed in the project was again d (e residential and f clubhouse), based upon the site plan approval of the project from the Township granted on r.

On t, the Partnership received a letter from the Authority that indicated that there was a discrepancy between the number of residential buildings included in the carryover allocation (j) and the commitment application (e). Only j building identification numbers (BIN) were issued with the carryover allocation.

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 will have e residential buildings rather than j does not affect: (a) the amount of low-income housing tax credit allocated to the Project, (b) the ranking of the Project in Agency's 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 carryover allocation to include a BIN for the f additional residential building in the Project and allocate the appropriate amount of low-income housing tax credit to each of the e existing residential buildings in the Project, not exceeding $h for the entire Project. As required under § 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 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 j buildings when the actual number of residential buildings was e. This error was not a misinterpretation of the applicable rules and regulations under § 42. However, as a result of this error, the 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 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 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 each building 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 carryover allocation inaccurately reflects the intent of Agency and Partnership when the 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 f additional BIN to accurately reflect that there are e residential buildings in the Project; and

5. Agency will allocate low-income housing tax credit to each of the e residential buildings in the Project, not exceeding $h for the entire Project.

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

1. Amend the u carryover allocation to include a BIN for the f additional residential building in the Project and to allocate the appropriate amount of low-income housing tax credit to each of the e residential buildings in the Project, not exceeding $h for the entire Project. The new BIN does not have to be in sequential order with the existing e BINs and the existing e BINs shall continue in effect. On the u 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 u carryover allocation to an amended Form 8610, Annual Low-Income Housing Credit Agencies Report, for u, 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, we are sending a copy of this letter ruling to the 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

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

Enclosure: 6110 copy