199918062

Internal Revenue Service

Index Number: 42.14-01

Department of the Treasury

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

Contact Person:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI: 5 – PLR-120411-98
Date:
FEB 4, 1999

Legend:

Partnership =

Agency =

Project =

State =

City =

Co-General Partner =

Partnership Representative =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

Dear :

This letter responds to your letter dated November 2, 1998, and subsequent correspondence, 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.

Agency and Partnership represent that the facts are as follows:

FACTS:

Partnership is a State limited partnership that was formed on a. Partnership is engaged principally in the business of developing land and constructing and operating the Project consisting of b units, located in City. Partnership expects that all of the units in the Project will qualify for low-income housing credits pursuant to § 42.

Co-General Partner, a City based non-profit organization, desired to develop an affordable housing complex. Co-General Partner hired an accountant to prepare and submit an application for low-income housing tax credits in hopes to realize this goal. This original application anticipated b units in c building. In d, Partnership submitted an application for a reservation of e low-income housing credits in the amount of $f. The application reflected a site plan calling for b units in c building. On g, the Project received a reservation letter from Agency tentatively reserving low-income housing credits in the amount of $h to c building in the Project.

Soon after the reservation of e low-income housing credits, Co-General Partner requested assistance from Partnership Representative to act as a co-developer and managing general partner. At this time, Partnership changed the Project's design to include i residential buildings and a community building. This provided the Project with construction and operating efficiencies, as well as improving the aesthetics and marketability of the units.

Co-General Partner and Partnership Representative had not yet reached a formal joint venture agreement and had not thoroughly reviewed all documents at the time the accountant completed the carryover certification. Partnership Representative was unaware that the original credit reservation had only c building identification number (BIN), and the accountant was unaware that the architectural plans had been modified from c to i residential buildings. The week the "Certificate of Allocation Under 10% Basis Exception" was submitted, Co-General reached an agreement with Partnership Representative to co-develop and manage the Project. Hence, Co-General Partner and Partnership Representative are currently co-general partners in the operating partnership. On j, the Project received h in carryover allocation credits from Agency for c building.

Subsequent to the date of the e carryover allocation, in the later part of k, Partnership identified the tax credit investor and substantial due diligence ensued. Late in the due diligence process, it was discovered that the original application showed only c building and the tax credit allocation documents showed only c BIN. Accordingly, Agency was notified in writing of the BIN issue.

Upon notifying Agency of the changes to the Project, Agency requested that supplemental information in a revised application be submitted along with a

reprocessing fee. The revised application was submitted to Agency and a meeting was arranged to discuss the changes and appropriate course of action to issue additional BINs. These issues were discussed at the l Agency board meeting, during which the Project modifications were approved and a request for a letter ruling to the Internal Revenue Service for additional BINs was authorized.

As a result of the error of Partnership in notifying Agency of the increase in residential buildings in the Project prior to the carryover certification, the number of buildings that are to be used on the certificates of occupancy will no longer match the number assigned by Agency for purposes of providing a carryover allocation. Thus, the Forms 8609, Low-Income Housing Credit Allocation Certification, to be issued to the Project will not reflect the correct number of buildings.

Agency and Partnership, at the time of the e carryover allocation, intended for b units to be constructed in the Project. The existing building allocation pursuant to the carryover allocation does not allow Partnership to maximize the credits allocated to the Project and seriously affects the Project's financial feasibility. Thus, the e carryover allocation inaccurately reflects the intent of Agency and Partnership at the time the carryover allocation document was prepared.

The mistake with respect to the number of qualified low-income buildings was not discovered until late k, when Partnership's limited partner was conducting due diligence. Upon discovery of the problem, Partnership contacted Agency to correct this error or omission.

The correction of the administrative error or omission will have no affect on the low-income housing credits allocated to the entire Project. The correction, however, will affect the credits allocated to each building. Furthermore, the correction of the administrative error or omission will have no effect on the housing credit ceiling under § 42(h)(3)(C) or on Agency's unused housing credit carryover that is assigned to the Secretary under § 42(h)(3)(D).

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 i residential buildings rather than c 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 e 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 e carryover allocation to include BINs for the m buildings added to the Project and allocate the appropriate amount of low-income housing tax credit to each of the i 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 omission when the e carryover certification referenced c building when the actual number of residential buildings was i. This omission was not a misinterpretation of the applicable rules and regulations under § 42. However, this omission did result in a e 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 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 e 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 e 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 building that properly received a BIN.

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

1. Partnership committed an administrative omission when the carryover certification submitted to Agency failed to indicate the increase in the number of buildings in the Project as a result of the change in the site plan;

2. Because of that administrative omission, the e carryover allocation inaccurately reflects the intent of Agency and Partnership when the e carryover allocation was executed;

3. Agency and Partnership requested to correct the administrative omission within a reasonable period of time after becoming aware of the administrative omission;

4. Agency will assign BINs to accurately reflect that there are i residential buildings in the Project; and

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

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

1. Amend the e carryover allocation to include BINs for the m additional buildings in the Project and to allocate the appropriate amount of low-income housing tax credit to each of the i buildings in the Project, not exceeding $h for the entire Project. The new BINs do not have to be in sequential order with the existing c BIN and the existing c BIN shall continue in effect. On the amended e carryover allocation, Agency should indicate that it is making the correction under § 1.42-13(b); and

2. Attach a copy of the amended e carryover allocation to an amended Form 8610, Annual Low-Income Housing Credit Agencies Report, for e, 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 Agency's 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,

(signed) Susan J. Reaman

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

Enclosure: 6110 copy