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Internal Revenue Service

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Department of the Treasury

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Refer Reply To:
CC:DOM:P&SI: 5 – PLR-100756-99
Date:
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Legend:

Partnership I =

Partnership II =

Agency =

Project =

State =

City =

347

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

Dear :

This letter responds to your letter dated November 24, 1998, and subsequent correspondence, submitted on behalf of Agency and Partnership II, 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 II represent that the facts are as follows:

FACTS:

Partnership I is a State limited partnership that was formed to acquire, develop, and operate the Project, a low-income housing project consisting of a units located in City.

On b, Partnership I submitted an application to Agency for an allocation of low-income housing tax credits which referenced c buildings with a total of a units in the Project. On d, Partnership I was granted low-income housing tax credits for the Project. On e, Partnership I received its f Carryover Agreement from Agency to carryover f low-income housing tax credits pursuant to § 42(h)(1)(E).

On g, Partnership II was established as a State limited partnership, and ownership of the Project was transferred from Partnership I to Partnership II. The change in ownership had no effect on the amount of low-income housing tax credits granted to the Project.

On h, Agency requested information for processing the Form 8609. By i, Partnership II had submitted all of the information requested by Agency. In j, Agency discovered an administrative error while reviewing the information submitted by Partnership II for the Form 8609.

The administrative error is in the Carryover Agreement which indicates that the Project consists of k building, rather than c buildings. In addition, the estimated eligible basis in the Carryover Agreement did not break down the costs for each building. When the Carryover Agreement was issued by Agency, reference was not made to the b application for low-income housing tax credit, which indicated c buildings. Agency issued the Carryover Agreement based upon the information submitted with the Carryover Agreement.

The fact that the Project was issued only k building identification number (BIN) is an administrative error. It was always the intent of Partnership I and Agency that the Project would comprise c buildings. Therefore, the original f Carryover Agreement inaccurately reflected the intent of Partnership I and Agency at the time the document was completed.

In early l, Partnership II was informed by Agency that a request for a private letter ruling would be needed. Partnership II and Agency actively obtained information and reviewed the necessary regulations to determine the proper procedures for filing a private letter ruling request.

Agency represents that if it was aware that the Project included additional buildings, Agency would have made the f carryover allocation pursuant to § 42(h)(1)(F) rather than § 42(h)(1)(E).

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

RULING REQUESTED:

Agency and Partnership II request the Internal Revenue Service to rule that Agency may amend the f 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 c buildings in the Project, not exceeding $n for the entire Project. As required under § 1.42-13(b)(3)(v), Agency and Partnership II 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, Agency committed an administrative error when the f Carryover Agreement referenced k building when the actual number of residential buildings was c. This error was not a misinterpretation of the applicable rules and regulations under § 42. However, as a result of this error, the f carryover allocation did not accurately reflect the intent of Agency and Partnership I 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 f 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 f 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 k building that properly received a BIN.

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

1. Agency committed an administrative error when it failed to identify the actual number of residential buildings in the Project in the Carryover Agreement submitted to Partnership I;

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

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

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

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

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

1. Amend the f 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 c buildings in the Project, not exceeding $n for the entire Project. The new BINs do not have to be in sequential order with the existing k BIN and the existing k BIN shall continue in effect. On the amended f

carryover allocation, Agency should indicate that it is making the correction under § 1.42-13(b); and

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

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

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Enclosure: 6110 copy