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Department of the Treasury
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Date: January 16, 2004
In Re:

Agency =
Partnership =
Project =
BINs =
\$X =
State =

Dear [redacted data]:

This letter responds to a letter dated September 22, 2003, and subsequent correspondence, that was submitted on behalf of the Agency and the Partnership, requesting permission under §42(n)(4) of the Internal Revenue Code and § 1.42-13 of the Income Tax Regulations to correct an administrative error in an allocation of the low-income housing credit dollar amounts.

The Agency and the Partnership have made the following representations:

The Partnership owns, operates, manages, and leases the Project, which includes buildings with the building identification numbers of BINs.

The total annual amount of low-income housing credits that the Agency allocated to the Project pursuant to two carryover allocation agreements was \$X. The carryover allocation agreements allocated the \$X to the Project as a whole and not to the individual buildings.

The Agency and the Partnership intended that the Forms 8609 would reflect as to each building in the Project a maximum amount of low-income housing credits based on the Partnership's actual rental of residential units in the building. However, the Partnership provided the Agency with erroneous applicable fractions for the buildings in the Project. The Agency prepared the Forms 8609 using the erroneous applicable fractions. The Forms 8609 were filed with the Service. The Partnership discovered the error when preparing its tax return.

The Agency and the Partnership request a ruling granting approval to correct the Form 8609s for the buildings in the Project because of an administrative error. The correction of the administrative error will not affect the low-income housing credit dollar amount that the Agency has allocated to the Project. It will affect the dollar amount of low-income housing credits that has been allocated to each building in the Project on Forms 8609. The correction of the administrative error will not affect the determination of the components of the State's low-income housing credit ceiling under § 42(h)(3)(C) or the State's unused low-income housing credit carryover that is assigned to the Secretary of Treasury under § 42(h)(3)(D). As

required by § 1.42-13(b)(3)(v), the Agency and the Partnership agree to such conditions as the Secretary considers appropriate.

Pursuant to § 42(n)(4), the Secretary of Treasury has prescribed § 1.42-13, which provides the opportunity for housing credit agencies (agencies) to correct administrative errors and omissions with respect to allocations and record keeping within a reasonable period after their discovery, taking into account the availability of regulations and other administrative guidance from the Secretary.

Section 1.42-13(b)(2) describes 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)(3)(iii)(A) requires an agency to obtain the Secretary's prior approval to correct 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 a building or project.

Section 1.42-13(b)(3)(iv) requires an agency to submit a request for the Secretary's approval under § 1.42-13(b)(3)(iii) within a reasonable period after discovering the administrative error or omission and to agree to any conditions that may be required by the Secretary under § 1.42-13(b)(3)(v).

Accordingly, we conclude under § 1.42-13(b)(3)(iii) that the Agency may amend the Forms 8609 for the Project to allocate the correct amount of low-income housing credit to each building in the Project, but not to exceed an aggregate amount of \$X for the Project. The Agency must indicate on the top of the Forms 8609 that the correction is being made under § 1.42-13 of the Income Tax Regulations.

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 the Agency, the Partnership, and the Partnership's authorized representative.

Sincerely,

HAROLD E. BURGHART
Senior Adviser, Branch 5
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:

6110 copy

CC: