

Private Letter Ruling 9327013, IRC Section 42

Date: April 6, 1993

Dear ***

This letter responds to your letter of December 4, 1992, and subsequent correspondence submitted on behalf of Taxpayer, requesting a ruling under section 42(n) of the Internal Revenue Code.

Taxpayer has made the following representations.

Taxpayer is a State X limited partnership formed in t1. The City Y District Office has examination jurisdiction over Taxpayer's federal income tax return. Corp A, a State Y corporation, is Taxpayer's general partner, and Corp B, a State Z corporation, is Taxpayer's sole limited partner. Taxpayer owns the Project. The Project was acquired by Taxpayer from Limited Partnership under a Project Development and Sale Contract (the Contract) dated t2. Under the Contract, Limited Partnership continued to serve as developer of the Project on behalf of Taxpayer.

In late t3, Limited Partnership, a State X limited partnership, of which Corp A was the general partner and Corp B was the limited partner, began developing the Project. The site chosen for the Project is a a-acre parcel of land located in a developing area of City X, approximately b miles from the Airport. The site was bordered on three sides by vacant land and on the fourth side by an upper-end single-family housing development. The Project was initially planned as a newly constructed b building apartment complex (including a community building) for low-income persons in City X, and all of the c units in the Project were intended for occupancy by low-income persons. An application for t3 low-income housing credit dollar amounts (Credits) was made in December of t3 to the Agency for \$d in Credits.

The Project did not receive a t3 allocation, but the submitted application was "rolled over" as an application for t4 credits. Limited Partnership continued working on the Project through t4, focusing on arranging the financing for the Project and refining the development concept. The Project was expanded to e units. The original development plan was modified to provide for f buildings, two to three stories in height, each containing from k to l apartment units. The buildings were originally identified on the architect's site plan by type, designated as Type I, II, III or IV, depending on the number and type of units contained in each building.

That design was the site plan in effect on t5 when Limited Partnership submitted a new revised application for an allocation of t4 Credits in the amount of \$g. With the application, Limited Partnership submitted a draft carryover allocation form (i.e., in the form requested to be executed by the Agency), electing to fix the applicable percentage. This form summarized the anticipated eligible basis and Credits broken down on a building-by-building basis. In the box labeled "Building Identification Number" (BIN),

Limited Partnership entered the numbers that corresponded to the site plan as it then existed. Building One was the community building and represented the Project's common area.

The Agency formally made an allocation of \$g on t6 by executing the carryover form which had been submitted by Limited Partnership in draft form. The Agency also assigned BIN Numbers to each of the buildings -- "h" through "i" -- by writing in the official BIN in the same BIN boxes where "h" through "i" had been entered on the building-by-building breakout. Because it was a t4 allocation, the Agency was unable to do a project based allocation under section 42(h)(1)(F) of the Code, which became effective for t11 allocations.

Subsequent to the application for a carryover allocation, the site plan underwent at least three changes. These changes were a result of a series of meetings involving the architect, Mr. X of Corp C, the developer, officials from the Department, representatives from the Association and Council 1, and individual neighbors from the adjacent residential neighborhood. These discussions centered principally on the setback requirements for each building, the location of the three-story buildings, location of dumpsters, and construction of privacy fences.

The Project site was bounded on two sides by land zoned retail or office/industrial, and the homeowners wanted the larger buildings located closer to those boundaries and farther away from the boundary located next to the areas zoned for single family dwellings. Although each of the three plan changes in t4 involved moving buildings, there were no changes in the building configurations themselves, nor in the unit mix or floor size of the buildings. However, as the plans neared final form, Mr. X entered the official site plan numbers for each building on the site plan, in a clockwise manner. This was exactly the opposite numbering scheme used by Limited Partnership to identify the individual buildings in its application for the carryover allocation. For example, building "Three" as marked on the carryover allocation which received BIN TX-89-00621 was then designated Building 16 on the official site plan. None of these changes were submitted to the Agency.

The final plan, dated t7, was approved by final action of Council 2. The last change under the final plan shifted and slightly modified four buildings. Two of the buildings were slightly enlarged (adding 200 square feet to each building), and two buildings were reduced in size by an equivalent amount. This change was the only modification actually affecting any building size since the t5 application for a carryover allocation. All other changes involved shifting of buildings.

Beginning in t8, City X began issuing certificates of occupancy to Taxpayer for the buildings, using the official numbering system from the t9 plat. As a result of the shifts and renumbering, at the time that the application for the issuance of Forms 8609 (State X Form j is used for this purpose) was submitted to the Agency, after construction was completed, the locations on the site of the buildings that were used on the certificates of occupancy no longer matched the numbers "h" through "i" assigned by the developer to

the buildings for obtaining a carryover allocation. For example, building "Six" that received BIN TX-89-00624 under the numbering scheme used to obtain the carryover allocation, ended up with an official number 10 on the site plan and was recorded that way on the certificate of occupancy. The result was a mismatching of allocations and buildings. Thus, the final allocation, reflected in the Form 8609, did not reflect the correct size, i.e., qualified basis, of the buildings. For example, building number 4 (using the numbering on the official plan and the certificate of occupancy), which was placed in service on November 12, 1991, has a Form 8609 assigning \$328,188 in qualified basis although that building's maximum qualified basis should have been given as \$1,052,317.

When Corp B, Taxpayer's limited partner, was performing its due diligence prior to becoming a partner, the building numbering issued was discovered and representatives of Taxpayer verbally informed the Agency of the renumbering problem through telephone conversations. However, when the Forms j were submitted to the Agency, the issue concerning the scrambled numbering system was not communicated to those persons at the Agency engaged in preparing the Forms 8609.

The result of this confusion is that when the Forms 8609 were issued, the BINs originally assigned in the carryover allocation did not "move" as the buildings were relocated. The Agency erroneously assumed that the building numbers on the certificates of occupancy related to the same structures as had been allocated Credit as buildings "h through "i" under the carryover allocation, when, in fact, those structures had been relocated and renumbered.

With the exception of building 9, which by pure happenstance retained its numbering in the new plat, under the Forms 8609 each building was allocated Credits originally allocated to another building. Because of the differences in the size and shapes of the building, each building has now received either too little or too much credit relative to its actual eligible basis.

Each building in the Project still has the same number of units as originally planned, and all of the units in each building will still be occupied 100% by low-income tenants.

Under section 42(n) of the Code state and local housing credit agencies may correct administrative errors and omissions concerning allocations and record keeping within a reasonable period of time after their discovery.

An administrative error or omission is a mistake that results in a document that inaccurately reflects the intent of the housing credit 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. However, a misinterpretation of the applicable rules and regulations under section 42 of the Code is not an administrative error or omission covered by section 42(n). In this case, the Agency clearly intended to allocate the proper amount of Credits to the appropriate buildings in the Project. The Agency simply assumed that the

BINs on the certificates of occupancy matched the BINs given to the buildings on the t6 carryover allocation.

Based solely on facts submitted and the representations set forth above, we conclude that (1) the Agency committed an administrative error concerning an allocation when it incorrectly placed BINs on the Project's Forms 8609; (2) due to the administrative error the Project's Forms 8609 inaccurately reflect the intent of the Agency and Taxpayer when the Project's Forms 8609 were originally completed; and (3) the correction will be made within a reasonable period of time after the Agency became aware of the administrative error. Thus, under section 42(n) of the Code, the Agency may correct each of the Project's Forms 8609 that was erroneously completed due to the administrative error.

No opinion is expressed or implied regarding the application of any other provisions of the Code or regulations. Specifically, no opinion is expressed whether the Project otherwise qualifies for the low-income housing credit under section 42 of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent. Final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling may be modified or revoked by adoption of final regulations to the extent the regulations are inconsistent with any conclusion in this ruling. See section 11.04 Rev. Proc. 93-1, 1993-1 I.R.B. 10, 39. However, when the criteria in section 11.05 of Rev. Proc. 93-1 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

Sincerely yours,

JAMES RANSON

Chief, Branch 5

Office of the Assistant Chief Counsel

(Passthroughs and Special Industries)